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his normal duties and to an alleged wrongdoer, were protected.⁹⁸ Relying on regional circuit court precedents and expressly rejecting the Federal Circuit’s precedent, MSPB determined that the WPEA merely clarified the WPA, rather than substantively changing it, and could therefore apply retroactively to the instant case.⁹⁹ In dicta, MSPB also highlighted several instances where it had “question[ed] the breadth of the court's decisions with regard to excluding certain disclosures from the WPA's protection” and “cautioned against citing [a Federal Circuit case] for broad propositions concerning protected whistleblowing” because it believed the Federal Circuit’s interpretation to be inconsistent with the intent of the WPA.¹⁰⁰ The holding and language of *Day* seem to indicate MSPB’s willingness to adopt more whistleblower-friendly standards from the regional circuits and may provide a useful guide for future MSPB decisionmaking.

In *Delgado v. Merit Systems Protection Board* (“*Delgado I*”),¹⁰¹ the Seventh Circuit used its first review of an MSPB whistleblower reprisal decision to stake out a more whistleblower-friendly position. *Delgado I* required the court to determine the appropriate standard for determining whether the whistleblower had exhausted his remedies before OSC prior to seeking

⁹⁸ See *id.* at 591-95. The standard for determining whether a statute should be given retroactive effect was announced in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), which declared that “congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.” *Id.* at 264. Thus, if a new statute “would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,” it should not apply retroactively in a pending case. *Id.* at 280.

⁹⁹ See *Day*, 119 M.S.P.R. at 595-99, 595 n. 5 (“We have discretion...because the WPEA has changed the rights to judicial review of whistleblowers to include other courts of appeal for a 2-year period...Therefore, we must determine the issue of retroactivity with the view that the appellant ultimately may seek review of this decision before any appropriate court of appeal.”).

¹⁰⁰ *Id.* at 598 (citing *Askew v. Dep’t of the Army*, 88 M.S.P.R. 674 (2001); then citing *Czarkowski v. Dep’t of the Navy*, 87 M.S.P.R. 107 (2000)).

¹⁰¹ 880 F.3d 913 (7th Cir. 2018).

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MSPB review, an important procedural question in whistleblower reprisal cases.¹⁰² Under the Federal Circuit’s case law, the whistleblower must “inform [OSC] of the precise ground of his charge of whistleblowing.”¹⁰³ In practice, this standard has frequently excluded complaints filed by whistleblowers who are not trained in the law and thus fail to include the requisite degree of detail.¹⁰⁴ Rejecting MSPB’s use of the Federal Circuit’s standard as “unusually stringent,” the Seventh Circuit looked to analogous statutory exhaustion schemes from regional circuit and Supreme Court case law to craft a standard under which whistleblowers can seek MSPB review so long as they have presented OSC “sufficient information to permit a legally sophisticated reader to understand [the allegations] and to investigate.”¹⁰⁵ *Delgado I* was an important departure from Federal Circuit precedent and should serve as a guide for the other regional circuits.

E. All Circuit Review Act

The ACRA was passed when the All Circuit Review Extension Act expired, finally making all-circuit review of whistleblower reprisal claims permanent.¹⁰⁶ In enacting the ACRA, Congress conclusively rejected the arguments of critics of all-circuit review,¹⁰⁷ who had warned that the “sledgehammer” of all-circuit review would “create resource inefficiencies,”¹⁰⁸ permit

¹⁰² Whistleblowers may not pursue their claims before MSPB until they have exhausted their remedies with OSC. See *id.*; Whistleblower Protection Act of 1989, Pub. L. 101-12, § 3, 103 Stat. 16, 29.

¹⁰³ E.g., *Ward v. Merit Sys. Prot. Bd.*, 981 F.2d 521, 526 (Fed. Cir. 1992).

¹⁰⁴ See *Delgado I*, 880 F.3d at 923-25.

¹⁰⁵ See *id.* at 920-27.

¹⁰⁶ See All Circuit Review Act, Pub. L. 115-195, 132 Stat. 1510 (2018).

¹⁰⁷ See S. REP. NO. 115-229.

¹⁰⁸ Jocelyn Patricia Bond, *Efficiency Considerations and the Use of Taxpayer Resources: An Analysis of Proposed Whistleblower Protection Act Revisions*, 19 FED. CIR. B.J. 107, 137 (2009).

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forum shopping, or otherwise promote excessive litigation.¹⁰⁹ Congress determined that these concerns were unfounded because they had not borne out in practice; the regional circuits had only heard six whistleblower reprisal cases between the enactment of the WPEA and 2018, while the Federal Circuit had heard thirty-one.¹¹⁰

Congress declared that the Federal Circuit’s exclusive jurisdiction had denied federal personnel “the most important single procedure which holds appeals court judges reviewable and accountable,” and that “the rationale for the Federal Circuit’s subject matter-based jurisdiction—the need for specialization in a particular area of the law—[did] not apply in whistleblower jurisprudence.”¹¹¹ It also voiced concern about the alarmingly low number of Federal Circuit cases in which whistleblowers had prevailed since the 1994 WPA amendments.¹¹² Citing favorably the Seventh Circuit’s decision in *Delgado I*, Congress affirmed that “a ‘split in the circuit’ was intended to occur with all-circuit review authority” so that the regional circuit courts could turn a critical eye to the Federal Circuit’s whistleblower reprisal jurisprudence and “increase accountability in their interpretations of the laws.”¹¹³ Despite Congress’s manifest desire to alter the anti-whistleblower standards that the Federal Circuit has developed, the regional circuit courts have largely adopted these standards as controlling in whistleblower reprisal cases.

¹⁰⁹ Chris Carlson, *A Supreme Debacle: The Federal Circuit’s Opportunity to Retain Exclusive Jurisdiction of Federal Whistleblower Appeals*, 24 FED. CIR. B.J. 293, 313 (2014-2015).

¹¹⁰ See S. REP. NO. 115-229.

¹¹¹ *Id.*

¹¹² “From October 1994 until WPEA’s enactment in 2012, the Federal Circuit ruled favorably for Federal employee whistleblowers on only three out of 243 appeals considered. Between enactment of [the WPEA] and...2018, the Federal Circuit heard 31 appeals of Federal employee whistleblowers and ruled favorably for the whistleblower in just one.” *Id.*

¹¹³ *Id.*

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III. Regional Circuit Court Whistleblower Cases After the ACRA

This section analyzes trends among the regional circuit courts following the 2018 enactment of the ACRA. Among the circuit courts that have taken up WPA claims, only the First Circuit and Seventh Circuit have departed from Federal Circuit precedent and held in whistleblowers’ favor.¹¹⁴ The remainder of the courts have indicated that they intend to follow the Federal Circuit’s case law on WPA claims.¹¹⁵ Neither the Second Circuit, Third Circuit, nor Eighth Circuit has taken up whistleblower claims during this period, so they are excluded.

A. The First Circuit

The First Circuit court has only heard one WPA claim since the 2018 enactment of the ACRA, but that single case constituted a significant departure from Federal Circuit precedent.¹¹⁶ In *Mount v. Department of Homeland Security*,¹¹⁷ the First Circuit declined to adhere to the Federal Circuit’s stringent exhaustion standard, declaring it “unnecessary for an employee to correctly label the cause of action or legal theory behind his claim for it to be deemed exhausted before the OSC, as long as he or she provides a ‘sufficient [factual] basis’ for the MSPB to pursue an investigation regarding that particular claim.”¹¹⁸ As such, the First Circuit adopted the exhaustion standard enumerated by the Seventh Circuit in *Delgado I*.¹¹⁹ The court’s analysis drew heavily on the *Delgado I* opinion, which it cited for the proposition that the WPA does not demand “a perfectly packaged case ready for litigation” and that it should not be construed to

¹¹⁴ See *infra* parts III.A., III.E.

¹¹⁵ See *infra* parts III.B.-III.D, III.F.-III.I.

¹¹⁶ See *Mount v. Dep’t of Homeland Sec.*, 937 F.3d 37 (1st Cir. 2019).

¹¹⁷ 937 F.3d 37 (1st Cir. 2019).

¹¹⁸ *Id.* at 48.

¹¹⁹ See *id.* at 47-48 (citing *Delgado v. Merit Sys. Prot. Bd.*, 880 F.3d 913, 923-24 (7th Cir. 2018)).

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“[make] it harder for whistleblowers to obtain relief.”¹²⁰ The fact that the First Circuit has used its single whistleblower reprisal case to join the Seventh Circuit in staking out a whistleblower-friendly stance is certainly promising, but whether the court will continue this trend in addressing more substantive issues remains to be seen.

B. The Fourth Circuit

The Fourth Circuit has heard four WPA claims since the 2018 enactment of the ACRA, finding against the alleged whistleblowers in all four cases.¹²¹ The cases fall into three categories: two cases where WPA litigants improperly filed suit in district courts,¹²² one case where the claimant had failed to allege both a protected disclosure and that such disclosure had been a contributing factor in the challenged personnel action,¹²³ and one case where the employer proved by clear and convincing evidence that it would have taken the same personnel action absent the alleged whistleblowing conduct.¹²⁴ The first two cases involve a procedural question that has not proven controversial in WPA jurisprudence, as the federal district courts do not have jurisdiction over federal personnel whistleblower reprisal claims.¹²⁵ However, the latter

¹²⁰ *Id.* at 45-46.

¹²¹ See *Campbell v. McCarthy*, 952 F.3d 193 (4th Cir. 2019); *Zachariasiewicz v. Dep’t of Just.*, 48 F.4th 237 (4th Cir. 2022); *Jones v. Merit Sys. Prot. Bd.*, No. 21-1254, 2022 U.S. App. LEXIS 7189 (4th Cir. 2019); *Weber v. Dep’t of Veterans Affs.*, No. 19-2004, 2022 U.S. App. LEXIS 15173 (4th Cir. 2022).

¹²² See *Campbell*, 952 F.3d at 207; *Zachariasiewicz*, 48 F.4th at 249.

¹²³ The claimant’s disclosures were not protected because they were merely “vague allegations of wrongdoing regarding broad and imprecise matters,” and they had not been a contributing factor in the challenged personnel actions because the acting officials were not aware of the disclosures. See *Jones*, 2022 U.S. App. LEXIS 7189 at *1; *Jones v. Dep’t of Def.*, 2021 MSPB LEXIS 300, *28-37 (Jan. 25, 2021).

¹²⁴ The employer had sustained its burden by providing evidence that workplace hostilities would have supported the challenged personnel action and that the acting supervisor possessed no animus toward the whistleblower. See *Weber*, 2022 U.S. App. LEXIS 15173 at *5-7.

¹²⁵ WPA claims must be filed with MSPB, and appeals from MSPB’s WPA decisions are only to be heard by “the Federal Circuit or any court of appeals of competent jurisdiction.” 5 U.S.C. § 7703.

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two cases indicate that the Fourth Circuit has displayed a tendency to conform with Federal Circuit precedent on WPA issues,¹²⁶ making it similarly unfriendly to WPA litigants.

C. The Fifth Circuit

The Fifth Circuit has only heard one WPA claim since the 2018 enactment of the ACRA, which was decided against the alleged whistleblower.¹²⁷ The court found that WPA protection was not appropriate because the plaintiff, who served as a supervisor, did not occupy a “covered position” within the statute’s definition.¹²⁸ While the court correctly explains that the plaintiff’s position is not specifically enumerated in the WPA,¹²⁹ its general discussion of the law’s scope clearly evinces the court’s unwillingness to read the WPA expansively as the remedy Congress intended it to be.¹³⁰ This narrow interpretation may signal that the court is likely to take a less whistleblower-friendly stance on less clear-cut questions in the future.

D. The Sixth Circuit

The Sixth Circuit has heard two WPA claims since the 2018 enactment of the ACRA, both of which were decided against the alleged whistleblowers.¹³¹

¹²⁶ See *Jones*, 2022 U.S. App. LEXIS 7189 at *1 (denying rehearing of an MSPB decision that relied heavily on Federal Circuit standards); *Weber*, 2022 U.S. App. LEXIS 15173 at *6-7 (adopting the Federal Circuit’s test for determining whether an employer would have taken the same adverse personnel action absent any whistleblowing conduct).

¹²⁷ See *Davis v. U.S. Marshals Serv.*, 849 F. App’x 80 (5th Cir. 2021).

¹²⁸ See *id.* at 81-82, 85.

¹²⁹ See *id.* at 85.

¹³⁰ *Id.* (rejecting the claimant’s argument that “he should be allowed to proceed with his claim ‘to comport with the spirit and meaning of the Act’”).

¹³¹ See *Eluhu v. Dep’t of Veterans Affs.*, 801 F. App’x 952 (6th Cir. 2020); *Carson v. Merit Sys. Prot. Bd.*, No. 20-3459, 2021 U.S. App. LEXIS 14691 (6th Cir. 2021).

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The first case, *Eluhu v. Department of Veterans Affairs*,¹³² demonstrates that the Sixth Circuit may take an even more stringent approach to evaluating the “contributing factor” element than the Federal Circuit has.¹³³ The court held that the plaintiff had failed to establish that his disclosure was a contributing factor because he did not adduce direct evidence that the supervisor responsible for the challenged personnel action had actual knowledge of the disclosure.¹³⁴ While the court acknowledged the language added to the WPA by the 1994 amendments, which allows a plaintiff to prove constructive knowledge based on timing, it nonetheless held that the plaintiff’s demonstration of a mere three-month period between his disclosure and the challenged personnel action was “nothing more than [an] unsubstantiated claim.”¹³⁵ This analysis is shockingly dismissive of both the plain language of the WPA and the validity of the plaintiff’s claim, demonstrating a likely hostility toward whistleblowers from the Sixth Circuit.

In *Carson v. Merit Systems Protection Board*,¹³⁶ the court found that an employer’s failure to investigate the claims contained in an employee’s disclosure, absent any other adverse action, do not fit the definition of “prohibited personnel practice” under the WPA.¹³⁷ The court explained, citing Federal Circuit precedent, that personnel actions with “no impact on day-to-day duties and responsibilities” do not fit within the WPA’s prohibition of any retaliatory “significant change in duties, responsibilities, or working conditions.”¹³⁸ Since the employer’s mere failure to

¹³² 801 F. App’x 952 (6th Cir. 2020).

¹³³ *See id.* at 955-56.

¹³⁴ *See id.* at 955.

¹³⁵ *Id.* at 955-56.

¹³⁶ No. 20-3459, 2021 U.S. App. LEXIS 14691 (6th Cir. 2021).

¹³⁷ *See id.* at *8-9.

¹³⁸ *See id.* at *7-8 (citing *Hesse v. Dep’t of State*, 217 F.3d 1372, 1378-81 (Fed. Cir. 2000)).

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investigate did not “[result] in a physical difference in the conditions of his job or [affect] his duties or responsibilities,” the claimant had not established a prohibited personnel practice.¹³⁹

E. The Seventh Circuit

The Seventh Circuit has heard two WPA claims since the 2018 enactment of the ACRA, one of which was decided in favor of the alleged whistleblower and one of which was decided against the alleged whistleblower.¹⁴⁰

In *Delgado v. Department of Justice* (“*Delgado II*”),¹⁴¹ the court had previously found in the plaintiff’s favor, remanding the case to MSPB.¹⁴² MSPB, however, failed to comport with the court’s opinion and again dismissed the plaintiff’s claim in “an obvious, unexplained, and astonishing example of administrative obduracy.”¹⁴³ The court dedicates its opinion to a lengthy explanation of the specific provisions of the WPA and a thorough analysis of its application to the instant case, emphasizing Congress’s intent to prohibit reprisal against whistleblowers and condemning MSPB’s rigid enforcement.¹⁴⁴ While the case certainly elicits concern about MSPB’s desire and ability to enforce the WPA, it affirms the Seventh Circuit’s willingness to depart from Federal Circuit precedent in substantive respects.

¹³⁹ *Id.* at *8.

¹⁴⁰ *See Delgado v. Dep’t of Just.*, 979 F.3d 550 (7th Cir. 2020); *Sledge v. Wilkie*, 771 F. App’x 664 (7th Cir. 2019).

¹⁴¹ 979 F.3d 550 (7th Cir. 2020).

¹⁴² *See id.* at 553; *supra* part II.D.3.

¹⁴³ *Delgado II*, 979 F.3d at 556.

¹⁴⁴ *See id.* at 553-62.

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In *Sledge v. Wilkie*,¹⁴⁵ the court found that the plaintiff had failed to exhaust her remedies before OSC because she had never filed an OSC complaint.¹⁴⁶ Although the case was decided against the whistleblower, it is notable that the Seventh Circuit does not cite any Federal Circuit precedent in its brief opinion.¹⁴⁷ This seems to indicate that the Seventh Circuit will remain at the forefront of the development of new whistleblower reprisal jurisprudence.

F. The Ninth Circuit

The Ninth Circuit has heard six WPA claims since the 2018 enactment of the ACRA, finding against the alleged whistleblowers in all six of them.¹⁴⁸ The cases can be summarized as follows: three cases where employers proved by clear and convincing evidence that they would have taken the same personnel action absent any whistleblowing conduct,¹⁴⁹ one case where the disclosure did not merit WPA protection,¹⁵⁰ one case where the plaintiff’s claim was precluded by res judicata,¹⁵¹ and one case where a district court properly dismissed the complaint for lack of subject matter jurisdiction.¹⁵²

The cases in which the court found that employers had successfully carried their evidentiary burden present the most obvious indications that the Ninth Circuit intends to adhere

¹⁴⁵ 771 F. App’x 664 (7th Cir. 2019).

¹⁴⁶ See *id.* at 665.

¹⁴⁷ See *id.* at 665-67.

¹⁴⁸ See *Alguard v. Dep’t of Agric.*, 755 F. App’x 699 (9th Cir. 2019); *Huang v. Dep’t of Homeland Sec.*, 844 F. App’x 942 (9th Cir. 2021); *Lucchetti v. Dep’t of the Interior*, 754 F. App’x 542 (9th Cir. 2018); *Flynn v. Dep’t of the Army*, 802 F. App’x 298 (9th Cir. 2020); *Mason v. Dep’t of Def.*, 821 F. App’x 888 (9th Cir. 2020) *French v. Wash. State Dep’t of Health*, 735 F. App’x 367 (9th Cir. 2018).

¹⁴⁹ See *Alguard*, 755 F. App’x at 700; *Huang*, 844 F. App’x at 943-45; *Lucchetti*, 754 F. App’x at 543-45.

¹⁵⁰ See *Flynn*, 802 F. App’x at 299.

¹⁵¹ See *Mason*, 821 F. App’x at 889.

¹⁵² The plaintiff attempted to sue a state agency for whistleblower reprisal and the district court rejected her suit because “the WPA only applies to federal employees of executive agencies.” *French*, 735 F. App’x at 367.

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closely to earlier Federal Circuit precedent when deciding whistleblower reprisal cases, as all three opinions cite the Federal Circuit for the appropriate test and analysis thereunder.¹⁵³ The test, announced in *Carr v. Social Security Administration*,¹⁵⁴ instructs a court to consider “(1) ‘the strength of the agency’s evidence in support of’ its action; (2) ‘the existence and strength of any motive to retaliate’; and (3) ‘any evidence that the agency takes similar actions against’ otherwise similarly situated non-whistleblowers.”¹⁵⁵ Analysis under the *Carr* test provides a loophole by which the WPA’s protection of “any disclosure” can be avoided.¹⁵⁶ These cases have found that employers satisfactorily demonstrated that they would have taken the challenged personnel action based on the “character or nature” of the disclosure, absent any other evidence of inadequate employee performance.¹⁵⁷ This doctrine blatantly contradicts Congress’s express intent that “[w]histleblowing should never be a factor that contributes in any way to an adverse personnel action.”¹⁵⁸ The line of cases creating the doctrine does not supply any guiding principle for employers to determine what qualities a disclosure must have in order to justify an adverse personnel action, essentially creating a ready-made excuse for retaliatory actions that are

¹⁵³ See, e.g., *Alguard*, 755 F. App’x at 699-700 (affirming that the Ninth Circuit applies the Federal Circuit’s test in assessing whether the employer has met its evidentiary burden).

¹⁵⁴ 185 F.3d 1318 (Fed. Cir. 1999).

¹⁵⁵ *Alguard*, 755 F. App’x at 700 (citing *Carr*, 185 F.3d at 1323).

¹⁵⁶ See, e.g., *Kalil v. Dep’t of Agric.*, 479 F.3d 821, 825 (Fed. Cir. 2007) (holding that the manner in which a whistleblower makes a protected disclosure can itself be grounds for an adverse personnel action, and therefore finding that the employer had satisfied its evidentiary burden).

¹⁵⁷ See *id.*; see also *Duggan v. Dep’t of Def.*, 883 F.3d 842, 846-47 (9th Cir. 2018) (finding the employer had satisfied its evidentiary burden because the whistleblower’s disclosure “conveyed a nasty and condescending tone”).

¹⁵⁸ 135 CONG. REC. 5033 (1989).

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challenged in court. The Ninth Circuit’s adoption of this approach signals that it will be a hostile forum for whistleblowers.¹⁵⁹

The remaining cases pose similar concerns for potential whistleblowers. In *Flynn v. Department of the Army*,¹⁶⁰ the Ninth Circuit adopted a burdensome Federal Circuit test for determining whether a whistleblower’s allegations of protected disclosures are “frivolous” or not.¹⁶¹ This test is reminiscent of the Federal Circuit’s *Fiorillo* approach, which required an assessment of the whistleblower’s state of mind and motivation for making the disclosures but was overruled by the WPA.¹⁶² Imposing a stringent requirement that a whistleblower be familiar with the legal nuances of potential disclosures in order for the disclosures to merit protections clearly contradicts the intent of WPA protections.

The Ninth Circuit’s whistleblower reprisal cases during the relevant period have relied heavily on Federal Circuit precedent and imposed similarly stringent requirements on whistleblowers, which likely means it does not plan to meaningfully depart from the Federal Circuit in future cases.

¹⁵⁹ See *Alguard*, 755 F. App’x at 700 (reasoning that because the plaintiff’s disclosure “was not directed at agency personnel, it was not likely to create a strong motive to retaliate,” so the employer had satisfied its evidentiary burden); *Huang*, 844 F. App’x at 944 (finding the employer had satisfied its evidentiary burden because the whistleblower’s disclosures were delivered with an “abrasive tone”); *Lucchetti*, 754 F. App’x at 544 (holding the employer had satisfied its evidentiary burden despite adducing no evidence about discipline against similarly situated non-whistleblowers).

¹⁶⁰ 802 F. App’x 298 (9th Cir. 2020).

¹⁶¹ “[U]nder the WPA, an employee must ‘reasonably believe’ that the disclosure relates to an activity prohibited under the statute.” *Flynn*, 802 F. App’x at 299 (citing *Lachance v. White*, 174 F.3d 1378, 1381 (Fed. Cir. 1999)).

¹⁶² See *Fiorillo v. Dep’t of Just.*, 795 F.2d 1544, 1550 (Fed. Cir. 1986); see also S. REP. NO. 100-413 (1988).

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G. The Tenth Circuit

The Tenth Circuit has heard four WPA claims since the 2018 enactment of the ACRA, all of which have been decided against the alleged whistleblowers.¹⁶³ The cases can be summarized as follows: two cases where the disclosures at issue were not protected by the WPA,¹⁶⁴ and two cases that were improperly filed in district courts.¹⁶⁵ The first two cases are notable because they cite only to Federal Circuit cases for the relevant WPA standards, indicating that the Tenth Circuit is not interested in developing its own whistleblower reprisal precedent.¹⁶⁶ The court’s disposition of the other two cases is less concerning because, as discussed above, the federal district courts’ inability to hear whistleblower reprisal cases has never been seriously challenged.¹⁶⁷

H. The Eleventh Circuit

The Eleventh Circuit has heard two WPA claims since the 2018 enactment of the ACRA, both of which were decided against the alleged whistleblowers.¹⁶⁸ One case turned on the whistleblower’s failure to allege a protected disclosure,¹⁶⁹ while the other turned on the district court’s lack of jurisdiction.¹⁷⁰

¹⁶³ See *Baca v. Dep’t of the Army*, 983 F.3d 1131 (10th Cir. 2020); *Bussey v. Esper*, 818 F. App’x 783 (10th Cir. 2020); *Fulkerson v. Comm’r, Soc. Sec. Admin.*, No. 21-2001, 2021 U.S. App. LEXIS 29110 (10th Cir. 2021); *Padilla v. Mnuchin*, 836 F. App’x 674 (10th Cir. 2020).

¹⁶⁴ See *Baca*, 983 F.3d at 1142; *Bussey*, 818 F. App’x at 786.

¹⁶⁵ See *Fulkerson*, 2021 U.S. App. LEXIS 29110 at *9-10; *Padilla*, 836 F. App’x at 677.

¹⁶⁶ See *Baca*, 983 F.3d at 1138-42; *Bussey*, 818 F. App’x at 786-87.

¹⁶⁷ See *supra* part III.B.

¹⁶⁸ See *Abrahamsen v. Dep’t of Veterans Affs.*, No. 20-14771, 2021 U.S. App. LEXIS 33948 (11th Cir. 2021); *Boyd v. Dep’t of Veterans Affs.*, 808 F. App’x 1015 (11th Cir. 2020).

¹⁶⁹ See *Abrahamsen*, 2021 U.S. App. LEXIS 33948 at *9-14.

¹⁷⁰ See *Boyd*, 808 F. App’x at 1015-16.

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As in other circuit courts, the Eleventh Circuit’s adoption of the Federal Circuit’s test for “frivolous” allegations of protected disclosures is concerning. In *Abrahamsen v. Department of Veterans Affairs*,¹⁷¹ the court first disregarded the relevance of the whistleblower’s disclosures of a hostile, retaliatory work environment, then concluded that his disclosures of potential threats to health and safety did not involve a sufficient degree of risk to justify WPA protection.¹⁷² Adopting this test continues the Federal Circuit’s project of narrowing the scope of protected disclosures under the WPA and indicates that the Eleventh Circuit is not a whistleblower-friendly forum.

I. The D.C. Circuit

The D.C. Circuit has heard two WPA claims since the 2018 enactment of the ACRA, both of which were decided against the alleged whistleblowers.¹⁷³ One case turned on the employer’s successful showing that it would have taken the challenged personnel action absent the protected disclosure,¹⁷⁴ while the other turned on the pendency of the whistleblower’s MSPB action.¹⁷⁵

In *Marcato v. Agency for International Development*,¹⁷⁶ the D.C. Circuit adopted the Federal Circuit’s *Carr* factors to determine whether the employer sustained its evidentiary burden.¹⁷⁷ It also relied on Federal Circuit precedent to hold that a whistleblower’s successful

¹⁷¹ No. 20-14771, 2021 U.S. App. LEXIS 33948 (11th Cir. 2021).

¹⁷² See *id.* at *14-15.

¹⁷³ See *Marcato v. Agency for Int’l Dev.*, 11 F.4th 781 (D.C. Cir. 2021); *Nastri v. Merit Sys. Prot. Bd.*, No. 19-1130, 2019 U.S. App. LEXIS 32620 (D.C. Cir. 2019).

¹⁷⁴ See *Marcato*, 11 F.4th at 786-90.

¹⁷⁵ See *Nastri*, 2019 U.S. App. LEXIS 32620 at *1-2.

¹⁷⁶ 11 F.4th 781 (D.C. Cir. 2021).

¹⁷⁷ See *id.* at 786-90.

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showing that a protected disclosure was a contributing factor in the challenged personnel action is not sufficient to evince the employer’s “retaliatory motive” as contemplated by the *Carr* factors.¹⁷⁸ This doctrine would return whistleblower reprisal jurisprudence to the era expressly condemned by the original enactment of the WPA, during which the Federal Circuit consistently required evidence of punitive or vindictive intent as a means of screening out otherwise legitimate claims of reprisal.¹⁷⁹ Imposing a new “retaliatory motive” standard contradicts the intended effect of the WPA: That personnel practices based on protected disclosures in any way would be made unlawful, rather than requiring the whistleblower to attempt to prove the employer’s subjective state of mind.¹⁸⁰

In *Nastri v. Merit Systems Protection Board*,¹⁸¹ the whistleblower had attempted to obtain judicial review of his claims before MSPB had actually issued a final decision, so the Eleventh Circuit declined to hear his case.¹⁸² Like district court jurisdiction, the concept that judicial review is unavailable until MSPB issues a final decision has been uncontroversial in whistleblower reprisal cases since the relevant statutory language only permits judicial review of “a final order or decision of the Merit Systems Protection Board.”¹⁸³

¹⁷⁸ See *id.* at 788-89 (citing *Kewley v. Dep’t of Health & Hum. Servs.*, 153 F.3d 1357, 1364-65 (Fed. Cir. 1998)).

¹⁷⁹ See Devine, *supra* note 3, at 554.

¹⁸⁰ See 135 CONG. REC. 5033 (1989).

¹⁸¹ No. 19-1130, 2019 U.S. App. LEXIS 32620 (D.C. Cir. 2019).

¹⁸² *Id.* at *1-2.

¹⁸³ 5 U.S.C. § 7703.

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J. Summary

Of the twenty-four cases heard by the regional circuit courts after the enactment of the ACRA, only two have been decided in whistleblowers’ favor.¹⁸⁴ Of the remaining twenty-two, many simply cite to Federal Circuit precedent without any discussion of the ACRA, the WPA, or the policy considerations underlying whistleblower protections. This may be for a variety of reasons; courts are generally likely to be more comfortable relying on existing precedent than attempting to develop a new body of case law, the regional circuits are being asked to review MSPB decisions shaped by decades of Federal Circuit cases, or the courts may simply agree with the Federal Circuit’s project of narrowing whistleblower protections.

The First Circuit and Seventh Circuit may nonetheless prompt the other circuits to reconsider their reliance on the Federal Circuit by highlighting the inconsistency of its decisions with Congress’s intent and by developing new case law.

IV. Federal Circuit Whistleblower Cases After the ACRA

The Federal Circuit has heard thirty-five WPA claims since the 2018 enactment of the ACRA, eight of which were decided in favor of the alleged whistleblowers,¹⁸⁵ and twenty-seven of which were decided against the alleged whistleblowers.¹⁸⁶

¹⁸⁴ See *Mount v. Dep’t of Homeland Sec.*, 937 F.3d 37 (1st Cir. 2019); *Delgado v. Dep’t of Just.*, 979 F.3d 550 (7th Cir. 2020).

¹⁸⁵ See *Craft v. Merit Sys. Prot. Bd.*, 860 F. App’x 744 (Fed. Cir. 2021); *Conejo v. Merit Sys. Prot. Bd.*, No. 2021-1347, 2021 U.S. App. LEXIS 26341 (Fed. Cir. 2021); *Smolinski v. Merit Sys. Prot. Bd.*, 23 F.4th 1345 (Fed. Cir. 2022); *Doyle v. U.S. Dep’t of Veterans Affs.*, 855 F. App’x 753 (Fed. Cir. 2021); *Hessami v. Merit Sys. Prot. Bd.*, 979 F.3d 1362 (Fed. Cir. 2020); *Marana v. Merit Sys. Prot. Bd.*, No. 2021-1463, 2022 U.S. App. LEXIS 1603 (Fed. Cir. 2022); *Tao v. Merit Sys. Prot. Bd.*, 855 F. App’x 716 (Fed. Cir. 2021); *McLaughlin v. Merit Sys. Prot. Bd.*, 853 F. App’x 648 (Fed. Cir. 2021).

¹⁸⁶ See *Alguard v. Dep’t of Agric.*, No. 2021-2154, 2022 U.S. App. LEXIS 21409 (Fed. Cir. 2022); *Aubart v. Merit Sys. Prot. Bd.*, No. 2021-2190, 2022 U.S. App. LEXIS 1262 (Fed. Cir. 2022); *Finizie v. Dep’t of Veterans Affs.*, No. 2021-1493, 2021 U.S. App. LEXIS 32735 (Fed. Cir. 2022); *Gessel v. Merit Sys. Prot. Bd.*, No. 2021-1815, 2022 U.S. App. LEXIS 1387 (Fed. Cir. 2022); *Miranne v. Dep’t of the Navy*, No. 2021-1497, 2021 U.S. App. LEXIS 30261 (Fed. Cir. 2021); *Oram v. Merit Sys. Prot. Bd.*, No. 2021-2307, 2022 U.S. App. LEXIS 7627 (Fed. Cir. 2022); *Young v. Merit Sys. Prot. Bd.*, 961 F.3d 1323 (Fed. Cir. 2020); *Lentz v. Dep’t of the Interior*, No. 2022-

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A. Favorable Outcomes for Whistleblowers

The cases in which the alleged whistleblowers prevailed can be summarized as follows: two cases in which MSPB had erred in finding that it lacked jurisdiction over the WPA claim,¹⁸⁷ one case in which the employer failed to prove that it would have taken the challenged personnel action absent the protected disclosure,¹⁸⁸ four cases in which the whistleblowers had made protected disclosures under the WPA,¹⁸⁹ and one case in which MSPB had improperly excluded part of the plaintiff’s pleadings.¹⁹⁰

2009, 2022 U.S. App. LEXIS 30662 (Fed. Cir. 2022); *Hobson v. Merit Sys. Prot. Bd.*, No. 2021-1693, 2022 U.S. App. LEXIS 7232 (Fed. Cir. 2022); *Bannister v. Dep’t of Veterans Affs.*, 26 F.4th 1340 (Fed. Cir. 2022); *Keys v. Dep’t of Hous. and Urb. Dev.*, No. 2021-2072, 2022 U.S. App. LEXIS 6046 (Fed. Cir. 2022); *Murray v. Dep’t of the Army*, No. 2021-1560, 2021 U.S. App. LEXIS 26185 (Fed. Cir. 2021); *Nagle v. U.S. Postal Serv.*, No. 2022-1306, 2022 U.S. App. LEXIS 18631; *Rickel v. Dep’t of the Navy*, 31 F.4th 1358 (Fed. Cir. 2022); *Staley v. Dep’t of Veterans Affs.*, No. 2020-2127, 2021 U.S. App. LEXIS 20937 (Fed. Cir. 2021); *Lalliss v. Dep’t of Veterans Affs.*, 848 F. App’x 894 (Fed. Cir. 2021); *Brown v. Dep’t of the Air Force*, No. 2021-2245, 2022 U.S. App. LEXIS 1602 (Fed. Cir. 2022); *Bryant v. Dep’t of Veterans Affs.*, 26 F.4th 1344 (Fed. Cir. 2022); *Johnson v. Merit Sys. Prot. Bd.*, No. 2021-2136, 2022 U.S. App. LEXIS 26947 (Fed. Cir. 2022); *Campion v. Dep’t of Def.*, No. 2022-1236, 2022 U.S. App. LEXIS 12401 (Fed. Cir. 2022); *Demery v. Dep’t of the Army*, 809 F. App’x 892 (Fed. Cir. 2020); *Oram v. Merit Sys. Prot. Bd.*, 855 F. App’x 687 (Fed. Cir. 2021); *Sistek v. Dep’t of Veterans Affs.*, 955 F.3d 948 (Fed. Cir. 2020); *Stern v. Dep’t of Veterans Affs.*, 859 F. App’x 569 (Fed. Cir. 2021); *Alford v. Merit Sys. Prot. Bd.*, No. 2021-2151, 2022 U.S. App. LEXIS 6323 (Fed. Cir. 2022); *Knapp v. Merit Sys. Prot. Bd.*, No. 2020-2122, 2021 U.S. App. LEXIS 34096 (Fed. Cir. 2021); *McGhee v. United States*, No. 2022-1082, 2022 U.S. App. LEXIS 9188 (Fed. Cir. 2022).

¹⁸⁷ See *Craft*, 860 F. App’x at 745-46 (concluding that retaliatory termination of workers’ compensation benefits is within the scope of prohibited actions under the WPA and thus within MSPB’s jurisdiction); *Conejo*, 2021 U.S. App. LEXIS 26341 at *7-10 (holding that retaliatory denial of promotion is clearly within the scope of prohibited actions under the WPA and thus within MSPB’s jurisdiction).

¹⁸⁸ See *Doyle*, 855 F. App’x at 760-62 (applying the *Carr* factors and finding that the employer had failed to show any equivalent consequences for similarly situated employees who were not whistleblowers).

¹⁸⁹ See *Smolinski*, 23 F.4th at 1351-53 (finding that disclosures of an employer bullying and sexually harassing the alleged whistleblower’s spouse would be protected under the WPA and thus within MSPB’s jurisdiction); *Hessami*, 979 F.3d at 1367-70 (clarifying that MSPB should not weigh evidence in assessing whether an alleged whistleblower has pled sufficient factual material to constitute a protected disclosure); *Marana*, 2022 U.S. App. LEXIS 1603 at *10-12 (finding that MSPB had not adequately resolved factual questions about the protected status of the whistleblower’s disclosures when it dismissed his WPA claim); *Tao*, 855 F. App’x at *721-22 (detailing various errors by the administrative law judge in concluding that the whistleblower had not made protected disclosures).

¹⁹⁰ See *McLaughlin*, 853 F. App’x at 649-50.

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B. Unfavorable Outcomes for Whistleblowers

The cases in which the alleged whistleblowers lost can be summarized as follows: one case in which the protected disclosure was not a contributing factor for some challenged personnel actions and the employer successfully carried its burden for others,¹⁹¹ seven cases where the alleged whistleblowers had not made protected disclosures under the WPA,¹⁹² one case where the plaintiff’s claim was precluded by res judicata,¹⁹³ three cases where the whistleblowers failed to prove that their disclosures were contributing factors in the challenged personnel actions,¹⁹⁴ one case where security clearance considerations made WPA concerns irrelevant,¹⁹⁵ one case where some of the whistleblower’s disclosures were not protected and others were not contributing factors in the challenged personnel actions,¹⁹⁶ one case where the alleged whistleblower was not a federal employee,¹⁹⁷ two cases where the challenged personnel action was not one prohibited by the WPA,¹⁹⁸ two cases where the whistleblowers had not exhausted their administrative remedies through OSC,¹⁹⁹ and one case that was improperly filed in the United States Court of Federal Claims.²⁰⁰

¹⁹¹ See *Alguard*, 2022 U.S. App. LEXIS 21409 at *10-12.

¹⁹² See *Aubart*, 2022 U.S. App. LEXIS 1262 at *11-15; *Finizie*, 2022 U.S. App. LEXIS 32735 at *5-8; *Gessel*, 2022 U.S. App. LEXIS 1387 at *7-12; *Miranne*, 2021 U.S. App. LEXIS 30261 at *6-10; *Oram*, 2022 U.S. App. LEXIS 7627 at *4-8; *Young*, 2020 U.S. App. LEXIS 1323 at *1326-30; *Lentz*, 2022 U.S. App. LEXIS 30662 at *14-23.

¹⁹³ See *Brown*, 2022 U.S. App. LEXIS 1601 at *3-5.

¹⁹⁴ See *Bryant*, 26 F.4th at 1348; *Johnson*, 2022 U.S. App. LEXIS 26947 at *9-13; *Hobson*, 2022 U.S. App. LEXIS 7232 at *4-7.

¹⁹⁵ See *Campion*, 2022 U.S. App. LEXIS 12401 at *3.

¹⁹⁶ See *Demery*, 809 F. App’x at 896-900.

¹⁹⁷ See *Oram*, 855 F. App’x at 689-90.

¹⁹⁸ See *Sistek*, 955 F.3d at 954-55; *Stern*, 859 F. App’x at 571-73.

¹⁹⁹ See *Alford*, 2022 U.S. App. LEXIS 6323 at *4-5; *Knapp*, 2021 U.S. App. LEXIS 34096 at *7-8.

²⁰⁰ See *McGhee*, 2022 U.S. App. LEXIS 9188 at *2-3.

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The higher proportion of favorable to unfavorable decisions in the Federal Circuit may indicate that the ACRA is functioning as intended by demonstrating to the Federal Circuit that its interpretation of the WPA needed to become more whistleblower-friendly. Furthermore, the regional circuits’ hesitance suggests that the Federal Circuit remains the intellectual leader in the area of federal employee whistleblower protections. By signaling to the regional circuits that it has reconsidered its position toward whistleblowers, the Federal Circuit may be able to initiate a wider shift through leading by example.

V. Conclusion

It remains to be seen whether the ACRA will finally vindicate the goals contemplated from the earliest enactments of federal whistleblower protections because the regional circuits are hesitant to disrupt decades of precedent. However, promising signals in the First Circuit and Seventh Circuit may pave the way for incremental change. The other regional circuits should follow their example and engage in more searching analysis of statutory whistleblower protections to assess whether they believe that the Federal Circuit’s case law has adequately vindicated those protections. Unlike many other areas of the law, Congress has explicitly stated that the regional circuits should create a split to place their decisions in critical conversation with each other and ultimately develop a stronger body of protections. It is far past time for the courts to fulfill their role in accomplishing the CSRA’s lofty goals.

Applicant Details

First Name **Marina**
 Last Name **Jerry**
 Citizenship Status **U. S. Citizen**
 Email Address jerry.m@northeastern.edu
 Address

Address
Street
1305 Kenyon St NW
City
Washington
State/Territory
District of Columbia
Zip
20010
Country
United States

Contact Phone Number **5184291520**

Applicant Education

Date of BA/BS **May 2019**
 JD/LLB From **Northeastern University School of Law**
http://www.nalplawschoolonline.org/ndlsdir_search_results.asp?lscd=12205&yr=2013
 Date of JD/LLB **May 1, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Northeastern University Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Mallory, Carol
c.mallory@northeastern.edu
6173735841

Nicole, Porter
nicole.porter@usdoj.gov

Liliana, Mangiafico
s.mangiafico@northeastern.edu
6173733307

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MARINA JERRY

1305 Kenyon St. Unit 1, Washington D.C., 20010 | (518) 429-1520 | jerry.m@northeastern.edu

May 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year law student at Northeastern University School of Law, writing to apply for a 2024-2025 clerkship with your chambers. I would be honored to clerk for a judge dedicated to addressing police brutality and racial biases in policing, as I share your commitment to protecting the rights of individuals involved with the criminal justice system.

As an aspiring civil rights litigator with significant legal research and writing experience, I am confident that I would be an asset to your chambers. I am a thorough and self-motivated researcher and writer, and have honed my legal research and writing skills while drafting memoranda and editing motions as an intern with the U.S. Department of Justice's Civil Rights Division and the ACLU National Prison Project. I have been recognized for my research and writing abilities at Northeastern, where I was selected to be a Legal Research and Writing Teaching Assistant and Northeastern University Law Review's Senior Articles Editor. These roles have equipped me with strong organizational abilities, exceptional editing and citation skills, and a keen eye for detail that will allow me to contribute meaningfully to your chambers.

I have enclosed my resume, writing sample, and transcripts, as well as letters of recommendation from Professor Carol Mallory [c.mallory@northeastern.edu], Professor Liliana Mangiafico [s.mangiafico@northeastern.edu], and U.S. Department of Justice Trial Attorney Nicole Porter [nicole.porter@usdoj.gov]. Thank you so much for your consideration.

Respectfully,
Marina Jerry

MARINA JERRY

1305 Kenyon St. Unit 1, Washington D.C. 20010 | (518) 429-1520 | jerry.m@northeastern.edu

EDUCATION

NORTHEASTERN UNIVERSITY SCHOOL OF LAW, Boston, MA

Candidate for Juris Doctor, May 2024

Journal: Senior Articles Editor, Northeastern University Law Review (2023-2024)
Associate Editor and Submissions Review Committee Member, Northeastern University Law Review (2022-2023)

Teaching Assistant: Legal Research and Writing, Carol Mallory (Spring 2023)

1L Social Justice Project: “The Past is the Present: The Violent Anti-Black Legacy of Policing in Chicago”

SAINT MICHAEL’S COLLEGE, Colchester, VT

Bachelor of Arts, *summa cum laude*, in Political Science and Religious Studies, May 2019

Honors: Political Science Department Award; Phi Beta Kappa

Activities: Peer Tutor; Honors Program; Mobilization of Volunteer Efforts; String Orchestra

PROFESSIONAL EXPERIENCE

AMERICAN CIVIL LIBERTIES UNION, National Prison Project, Washington, D.C. May 2023 – Aug. 2023

Full-time Legal Intern

Conducting legal research and drafting memoranda related to prisoners’ rights impact litigation. Editing briefs, motions, and other legal documents.

PRISONERS’ RIGHTS CLINIC, Northeastern University School of Law, Boston, MA

Research Assistant Jan. 2023 – Apr. 2023, May 2022 – Aug. 2022

Produced research memoranda assessing the harms associated with standardized parole conditions in Massachusetts.

Presented research to Harvard University’s Community Corrections and Reentry Roundtable.

U.S. DEPARTMENT OF JUSTICE, Civil Rights Division, Washington, D.C. Sept. 2022 – Dec. 2022

Full-time Legal Intern, Special Litigation Section

Conducted legal and factual research and drafted legal memoranda related to the enforcement of federal civil rights statutes in corrections and law enforcement settings. Edited motions and other legal documents.

CITY GATE, Washington, D.C. Sept. 2020 – July 2021

AmeriCorps Member

Developed grant proposals to secure funding for free out-of-school time programs that provide academic support to students in underserved communities. Coordinated City Gate’s academic enrichment and food distribution programs.

DON BOSCO CRISTO REY HIGH SCHOOL, Takoma Park, MD Aug. 2019 – July 2020

D.C. Service Corps Member

Mentored students in the school’s Corporate Work Study Program, connecting students from low-income households with internship opportunities. Managed program attendance and student evaluations.

VERMONT PUBLIC INTEREST RESEARCH GROUP, Burlington, VT June 2019 – Aug 2019

Canvass Field Manager

Supervised canvassers, recorded petition data, and engaged Vermonters in consumer protection and environmental justice campaigns.



Northeastern University School of Law Grading and Evaluation System

A global leader in experiential learning for over 50 years, Northeastern University School of Law (“NUSL”) integrates academics with practical skills as its core educational philosophy. To fulfill NUSL graduation requirements, law students must earn at least 83 academic credits and complete at least three terms of full-time, law-related work through “co-op,” our unique Cooperative Legal Education Program.

Consonant with the word “cooperative,” NUSL cultivates an atmosphere of cooperation and mutual respect, exemplified in our course evaluation system. NUSL faculty provide detailed feedback to students through narrative evaluations, designed to prepare law students for the practice of law. The narrative evaluations examine law student written work product, contributions to class discussions, results of examinations, specific strengths and weaknesses, and overall engagement in the course. Faculty also award the student a grade in each course, using the following categories:

- **High Honors**
- **Honors**
- **Pass**
- **Marginal Pass**
- **Fail**

A small number of courses are evaluated using a Credit/No Credit evaluation system, instead of a grade. NUSL does not provide GPAs or class ranks.

NUSL transcripts include the following information:

- The course name, grade received, and number credits earned;
- The faculty’s narrative evaluation for the course; and
- All co-ops completed, and the evaluations provided by the co-op employer.

“In progress” notations on a transcript indicate that a student has not yet received an evaluation from faculty for a particular course.

During the Spring 2020 semester, due to the COVID-19 pandemic, all courses were subject to mandatory “Credit” or “Fail” evaluations, except for year-long courses LAW 6160 and 6165.

NORTHEASTERN UNIVERSITY



Northeastern University Registrar

Office of the University Registrar

230-271
360 Huntington Avenue
Boston, MA 02115-5000
email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Marina Jerry NUID: 002124589
Issued To: MARINA JERRY
JERRY.M@NORTHEASTERN.EDU
REFNUM:06177592

Primary Program
Juris Doctor

College : School of Law
Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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INSTITUTION CREDIT:

Fall 2021 Law Semester (08/30/2021 - 12/22/2021)

LAW 6100	Civil Procedure	5.00 HH	0.000
LAW 6105	Property	4.00 HH	0.000

LAW 6106	Torts	4.00 HH	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Spring 2022 Law Semester (01/10/2022 - 05/06/2022)

LAW 6101	Constitutional Law	4.00 HH	0.000
LAW 6102	Contracts	5.00 H	0.000
LAW 6103	Criminal Justice	4.00 HH	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Summer 2022 Law Semester (05/09/2022 - 08/23/2022)

LAW 7300	Administrative Law	3.00 HH	0.000
LAW 7332	Evidence	4.00 H	0.000
LAW 7443	Professional Responsibility	3.00 H	0.000
LAW 7448	Employment Discrimination	3.00 HH	0.000
LAW 7660	Cradle-to-Prison Pipeline	3.00 HH	0.000

LAW 7690	Intro Writing for Litigation	1.00 H	0.000
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Fall 2022 Law Semester (08/29/2022 - 12/23/2022)

COOP: U.S. Dept. of Justice, Civil Rights Div.,
Special Litigation Section
Washington, DC

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Institution Information continued:

LAW 7966	Public Interest Co-op Work Exp	0.00 CR	0.000
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Spring 2023 Law Semester (01/09/2023 - 04/29/2023)

LAW 7350	Negotiation	3.00 HH	0.000
LAW 7398	Federal Crts & the Fed System	4.00 HH	0.000
LAW 7647	Trial Practice	2.00 H	0.000
LAW 7687	First Amend Religion Clauses	3.00 H	0.000
Ehrs:12.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

IN PROGRESS WORK

LAW 7530	Education Law	3.00	IN PROGRESS
LAW 7938	Research Assistant	1.00	IN PROGRESS
In Progress Credits		4.00	

Summer 2023 Law Semester (05/08/2023 - 08/26/2023)

COOP: ACLU Foundation, National Prison Project
Washington, D.C.

IN PROGRESS WORK

LAW 7935	Law Review - Editorial Board	1.00	IN PROGRESS
LAW 7966	Public Interest Co-op Work Exp	0.00	IN PROGRESS
In Progress Credits		1.00	

***** TRANSCRIPT TOTALS *****

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	63.000	0.000	0.000	0.000

TOTAL TRANSFER	0.000	0.000	0.000	0.000
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OVERALL	63.000	0.000	0.000	0.000
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***** END OF TRANSCRIPT *****

Page: 1

Rebecca Hunter Assoc VP & University Registrar

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	13482
Course Title:	LSSC: Research & Writing
Course ID:	LAW 6165
Credits:	2
Term:	Spring 2022 Law Semester
Instructor :	Mallory, Carol R.
Grade:	High Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

Marina's performance in this class was excellent. Marina has very strong analytical skills; her analysis was always well-supported by the law and she possesses the ability to think creatively about the application of law to fact that will make her an effective advocate. Marina's research skills are impressive as well. She approaches research thoughtfully and creatively, her research is always thorough, and she is able to clearly distill the relevant authority in furtherance of her analysis. Marina also has excellent writing skills; her written work is always well organized, clear and concise, and she pays meticulous attention to detail. Marina's final brief—a memorandum of law in opposition to a motion for summary judgment—was a compelling and well-crafted piece of advocacy that a practicing attorney would be proud of. Finally, Marina demonstrated a natural affinity for oral advocacy; in her final oral argument she delivered a well-conceived and persuasive argument on behalf of his client and did so with poise and confidence. In short, Marina possesses the intellect and skill to be an exceptional attorney.

Date: 5.31.2022 4:14PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 12974
Course Title: LSSC: Research & Writing
Course ID: LAW 6165
Credits: 2
Term: Fall 2021 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

LSSC: Research & Writing is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date: 6.2.2022 3:14PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 13482
Course Title: Legal Skills in Social Context
Course ID: LAW 6160
Credits: 2
Term: Spring 2022 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

As a part of the LSSC course, a group of law students, called a "Law Office" (LO), work together on a year-long social justice project on behalf of a community-based organization. Marina was a member of LO10, which worked on a project on behalf of a Chicago non-profit whose mission is to support grassroots organizations and movement building around the abolition of the prison-industrial complex (due to the nature of their work, the organization wishes to remain anonymous.) The focus of LO10's project was on the history of the Chicago Police Department (CPD), the historical efforts to reform it, and why those efforts have failed. The LO researched statutes, city ordinances, police oversight mechanisms, budgets, police unions, prominent political actors, and individual activists and movements for reform. The LO's project culminated in the creation of a website to catalogue their extensive research. The LO presented the results of their research to the community in a presentation entitled "The Past is The Present: The violent anti-Black legacy of policing in Chicago and why abolition is the only path forward."

As a whole, LO10 was the most collaborative, collegial, high functioning, and effective LO I have had the pleasure to work with in the seven years I've been teaching this course. As a group the law office held themselves to an extremely high standard; their performance—individually, in sub-groups, and as a group—was exceptional, and it was evident in their stellar final work product.

Marina's performance in this portion of the class was excellent as well. Marina engaged deeply with the complex issues covered in the course; she made valuable contributions to the classroom discussions of these issues and wrote thoughtful and insightful reflective essays on the assigned topics. Marina was also an invaluable member of the LO in terms of the project's overall success; she could be counted on to pitch in when needed and did excellent individual work. In particular, Marina did an extraordinary amount of research for the project; she independently and tenaciously researched all of the state statutes pertaining to the Chicago Police Department, was able to pull out themes and trends in this research, and effectively compiled all of this information on the LO's group website. Finally, Marina was a well-regarded member of the LO who had the ability to work well with all of her classmates; her commitment to the project and her hard work throughout the year greatly contributed to the LO's overall positive team dynamic and success.

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	12974
Course Title:	Legal Skills in Social Context
Course ID:	LAW 6160
Credits:	2
Term:	Fall 2021 Law Semester
Instructor :	Mallory, Carol R.
Grade:	High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

Legal Skills in Social Context is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date:	6.6.2022 1:49PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	12974
Course Title:	Torts
Course ID:	LAW 6106
Credits:	4
Term:	Fall 2021 Law Semester
Instructor :	Kahn, Jonathan D.
Grade:	High Honors

Course Description:

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

Performance Highlights:

Demonstrated an outstanding grasp of key tort principles and the contexts in which they apply.

Did an excellent job of applying understandings of theories of responsibility and alternatives to evaluate and apply legal rules to specific situations.

Your exam evidenced well developed skill for analyzing legal problems and applying rules to new fact patterns as well great skill at identifying and exploring some of the subtler legal issues presented.. You did a good job of drawing upon existing case law to build analogies to analyze the exam fact patterns.

Date:	1.20.2022 6:35PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 12974
Course Title: Civil Procedure
Course ID: LAW 6100
Credits: 5
Term: Fall 2021 Law Semester
Instructor : Williams, Lucy A.
Grade: High Honors

Course Description:

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution. Examines procedure within its historical context.

Performance Highlights:

- You identified virtually all of the issues.
 - Your analysis reflected a solid understanding of the complex materials covered in the course.
 - You routinely cited to relevant case law and rules and applied them to the facts of the hypotheticals.
 - Your discussion of subject matter jurisdiction, issue preclusion, and summary judgment were particularly strong.
 - Your performance on the multiple-choice portion of the exam was very good.
 - Your paper was very well written.
-

Date: 1.20.2022 6:33PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 12974
Course Title: Property
Course ID: LAW 6105
Credits: 4
Term: Fall 2021 Law Semester
Instructor : Kelley, Melvin J.
Grade: High Honors

Course Description:

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

Performance Highlights:

Demonstrated robust knowledge of core U.S. Property Law doctrine as well as the underlying public policy elements in addition to an exceptional capacity to mobilize these insights to assess novel fact patterns. Solid ability to convey legal analyses in written communications.

Date: 2.24.2022 1:54PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	13482
Course Title:	Criminal Justice
Course ID:	LAW 6103
Credits:	4
Term:	Spring 2022 Law Semester
Instructor :	Ramirez, Deborah A.
Grade:	High Honors

Course Description:

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

Performance Highlights:

Overall, your performance in this class was outstanding. On the exam, you did an outstanding job of analyzing the Model Penal Code issues presented by the factual scenario in question one. On question two, you did an outstanding job of analyzing the federal search and seizure issues that might be raised by the attorneys for Cougar and Samuel. In particular you did an outstanding job of analyzing the homicide issues in question one. This was one of the best answers in the class. Congratulations!

Date:	5.31.2022 2:32PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 13482
Course Title: Constitutional Law
Course ID: LAW 6101
Credits: 4
Term: Spring 2022 Law Semester
Instructor : Paul, Jeremy R.
Grade: High Honors

Course Description:

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

Performance Highlights:

Your produced cogent and sophisticated analyses of tough legal issues.

You demonstrated excellent command on constitutional doctrine.

Your writing is clear, effective and persuasive.

Date: 6.13.2022 10:12AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 13482
Course Title: Contracts
Course ID: LAW 6102
Credits: 5
Term: Spring 2022 Law Semester
Instructor : Phillips, David M.
Grade: Honors

Course Description:

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

Performance Highlights:

Your performance on the challenging multiple-choice first part of the examination was very good.

Your answers to the essay problems on the examination evinced quite good identification and analysis of the issues raised.

Your class participation was very good. Thank you.

Date: 6.2.2022 3:43PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	14116
Course Title:	Employment Discrimination
Course ID:	LAW 7448
Credits:	3
Term:	Summer 2022 Law Semester
Instructor :	Davis, Joshua M.
Grade:	High Honors

Course Description:

The Employment Discrimination course focuses on Title VII of the 1964 Civil Rights Act. It surveys the Supreme Court's decisions in this ever-changing area of law—including the recent decisions in Nassar and Vance, which reflect the efforts of the current Court to reduce the number of cases filed in this area.

Performance Highlights:

This summer's Employment Discrimination course included two opportunities for evaluation in addition to in-class participation. The first was a one on one counseling exercise in which the student advised the teacher (as client) in connection with an employment problem at a fictional law firm. The second, and most important, was the final examination. That examination consisted of two questions. The first was a traditional issue-spotting question involving a myriad of possible claims. The second (and shorter) question sought advice about terminations in a conceivably fraught context.

Marina's work this semester was simply excellent. Her contributions to class and performance on the counseling exercise reflected judgment and clarity of thinking. Her examination (which was excellent in all respects) cemented the strong impression made by her other work.

Date:	10.24.2022 3:30PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 14116
Course Title: Administrative Law
Course ID: LAW 7300
Credits: 3
Term: Summer 2022 Law Semester
Instructor : Rosenbloom, Rachel E.
Grade: High Honors

Course Description:

This course provides an introduction to the legal doctrines designed to empower and constrain government agencies and officials in their daily practice of governance. Topics include the constitutional status of administrative agencies, due process, the Administrative Procedure Act and the availability and standards of judicial review of agency actions. The course emphasizes the historical evolution of the modern administrative state and the regulatory agency's peculiar role in our system of governance.

Performance Highlights:

- Demonstrated a very strong grasp of the Administrative Procedure Act and relevant Supreme Court jurisprudence
 - Drafted an outstanding research memorandum analyzing the relationship between a regulation and its authorizing statute
 - Demonstrated excellent writing and analytical skills
-

Date: 10.6.2022 3:58PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 14116
Course Title: Cradle-to-Prison Pipeline
Course ID: LAW 7660
Credits: 3
Term: Summer 2022 Law Semester
Instructor : Mangiafico, Santina L.
Grade: High Honors

Course Description:

This course examines how we construct the cradle/school to prison pipeline while focusing on several pivotal points that channel largely poor Black and Brown students into it. With an eye toward practical application, students will learn about, critique, problem solve and create pipeline disrupting solutions looking to restorative justice as a time-honored justice paradigm alternative to our western constructions.

Performance Highlights:

Your performance in this course was very good. You assertively and confidently participated of class discussion, and were always prepared. Your final paper was well structured, researched, and articulately written. You carefully presented your findings and showed great command of the subject as you tried to answer the question presented.

You will be a great lawyer!

Prof. Mangiafico

Date: 10.7.2022 11:25AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	14116
Course Title:	Intro Writing for Litigation
Course ID:	LAW 7690
Credits:	1
Term:	Summer 2022 Law Semester
Instructor :	Leahy, Stefanie E.
Grade:	Honors

Course Description:

Introduces students to litigation documents, including engagement and demand letters; complaints; answers; discovery requests (such as interrogatories, requests for the production of documents, and requests for admission); and motions. Considers audience, purpose, and components in drafting a document, taking into account relevant strategic considerations and general principles that apply to all litigation documents. Examines the protections associated with attorney-client privilege and attorney work product. Offers students an opportunity to review and draft a variety of litigation documents, to find and modify sample documents, and to find and apply the rules of the relevant jurisdiction.

Performance Highlights:

Over the course of two weeks, students in Introduction to Writing for Lit had the opportunity to work collaboratively with other students as well as discuss and draft a variety of litigation documents.

Marina works well either independently with little supervision and was able to produce quality work. Marina successfully produced a case brief related to the operation of the work product doctrine in MA courts, edited a Complaint, submitted "research request" supervisor emails, analyzed documents for privilege, and produced a tightly written Motion in Limine.

Considering the amount of work required in such a short period of time, Marina displayed strong time management skills. In the final reflection, Marina highlighted the takeaways from the course, including the importance of relying on samples when appropriate and modifying them to fit the specific needs of the client. Marina also understands the importance of paying attention to variable factors within litigation, including for example the presiding judge or the cost implications to the client.

Marina is dedicated to improving her research and writing and she demonstrated that she has strong research and writing skills. She is professional and works hard.

Date:	9.13.2022 7:04PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	14116
Course Title:	Professional Responsibility
Course ID:	LAW 7443
Credits:	3
Term:	Summer 2022 Law Semester
Instructor :	Long, Alex
Grade:	Honors

Course Description:

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

Performance Highlights:

- Acquired a thorough overview of the rules of professional conduct, common law principles, and constitutional rules that regulate the conduct of lawyers.
 - Demonstrated understanding of ethics rules through completion of MPRE-type questions.
 - Made thoughtful and substantial contributions to class discussions.
 - Wrote an excellent research paper on bar admission for individuals with prior criminal convictions.
-

Date:	9.2.2022 10:21AM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 14116
Course Title: Evidence
Course ID: LAW 7332
Credits: 4
Term: Summer 2022 Law Semester
Instructor : Tumposky, Michael L.
Grade: Honors

Course Description:

This course examines how courtroom lawyers use the evidence rules to present their cases—notably, rules regarding relevance, hearsay, impeachment, character, and experts. The approach to the study of evidence will be primarily through the “problem” method—that is, applying the provisions of the Federal Rules of Evidence to concrete courtroom situations. Theoretical issues will be explored as a way to deepen the student’s appreciation of how the evidence rules can and ought to be used in litigation.

Performance Highlights:

Your performance in the class was very good and at times excellent. You have a thorough understanding of the Rules of Evidence. Well done!

Date: 10.14.2022 8:08PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 25278
Course Title: Federal Crts & the Fed System
Course ID: LAW 7398
Credits: 4
Term: Spring 2023 Law Semester
Instructor : Burnham, Margaret A.
Grade: High Honors

Course Description:

The subject of this course is the distribution of power between the states and the federal government, and between the federal courts and other branches of the federal government as manifested in jurisdictional rules of the federal courts. The topics covered include the nature of the federal judicial function, the review of state court decisions by the United States Supreme Court, and the jurisdiction of federal district courts, with special emphasis on actions claiming constitutional protection against state official actions.

Performance Highlights:

You performed exceptionally well in this course. You participated regularly and effectively across the semester, and you performed very well on the exam. You handled all of the questions on the exam with skill and finesse, demonstrating excellent control over a broad area of federal law and fine analytical skills.

Date: 5.30.2023 6:26PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	25278
Course Title:	Negotiation
Course ID:	LAW 7350
Credits:	3
Term:	Spring 2023 Law Semester
Instructor :	Bisson, Barry J.
Grade:	High Honors

Course Description:

Negotiation is a course where students engage in simulated disputes and transactions, which are then debriefed in class. Through frequent in-class mini-negotiations and major simulations, the course focuses on: (1) negotiation planning, (2) case preparation and evaluation, (3) client counseling and informed client consent, (4) analysis of the bargaining range and principled concession patterns, (5) competitive, cooperative and problem-solving strategies, (6) information bargaining, (7) ethics and (8) critiques of negotiation patterns and institutions. Students are required to turn in preparation materials and to keep weekly journals, reviewed by the instructor, addressing their experiences in, and thoughts about, negotiations. Students are encouraged to internalize habits of analysis, prediction, preparation, and flexibility and to become more self-evaluative for their future negotiating experiences.

Performance Highlights:

- Demonstrated superb negotiation skills.
 - Made many valuable contributions to class discussions.
 - Showed an exceptional understanding of the importance of knowing the facts of a client's case and the strategies that can be used to parse out those facts.
 - Showed a remarkable understanding of value-claiming and value-creating and how adversarial and problem-solving approaches impact negotiations.
 - Demonstrated a superior ability to diagnose, predict, and strategize various client matters.
 - Acquired an exemplary analytical understanding of a client's better alternative to a negotiated agreement ("BATNA").
-

Date: 5.12.2023 10:29AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 25278
Course Title: Education Law
Course ID: LAW 7530
Credits: 3
Term: Spring 2023 Law Semester
Instructor : Lopez, Jane
Grade: High Honors

Course Description:

Surveys current issues in U.S. education law. Topics may include high-stakes testing, school choice and the charter school movement, resegregation, special education, the school-to-prison pipeline, and school funding.

Performance Highlights:

- You did exceptionally well on the final exam. You distilled the relevant laws keenly and demonstrated a deep understanding of the statutory and constitutional issues and their application to the facts.
 - Your legal arguments were well constructed and clearly articulated.
 - Your in-class presentation demonstrated a deep understanding of the social context in which education law operates.
-

Date: 5.30.2023 9:28PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Marina Jerry
Exam #: 25278
Course Title: First Amend Religion Clauses
Course ID: LAW 7687
Credits: 3
Term: Spring 2023 Law Semester
Instructor : Haupt, Claudia
Grade: Honors

Course Description:

Examines the religion clauses of the First Amendment and related statutory regimes, emphasizing the U.S. Supreme Court's free exercise and establishment clause jurisprudence. Evaluates individual and institutional claims of religious liberty. Explores the implications of government funding of religious institutions and activities. Discusses government expression or endorsement of religious messages.

Performance Highlights:

Acquired knowledge of the key concepts of the law of religious free exercise and establishment clause limits on state religious expression.

Developed a set of analytical tools to use in constitutional problem solving and understand how courts and litigators approach questions of religious free exercise and nonestablishment.

Developed an appreciation for the social, political, economic, and historical values reflected in the development of this area of law.

Made thoughtful contributions to class discussions.

Demonstrated very strong research, writing, and analytical skills in seminar paper on a timely and important religion clause topic.

Date: 5.4.2023 3:30PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Marina Jerry
Exam #:	25278
Course Title:	Trial Practice
Course ID:	LAW 7647
Credits:	2
Term:	Spring 2023 Law Semester
Instructor :	Fahey, Elizabeth M.
Grade:	Honors

Course Description:

An introduction to the tactical and strategic problems commonly encountered in the trial of civil and criminal cases is the main objective of this course. Attention is given to the forensic aspects of trial practice, techniques of direct and cross-examination, and opening and closing summations. Prior course work in Evidence is a prerequisite.

Performance Highlights:

You were a very good student and contributor to this class.. You were well prepared for class. You are very poised, natural, articulate and appear comfortable as a trial advocate. You incorporated the lessons taught into your capable performances as a trial advocate. You were an enthusiastic and accomplished student in this course. You did a very nice job in your opening statement and direct and cross exams, all in the mock trial. You did very good work in this course.

You have done a very fine job on all four of this course's learning objectives, ie. developing an overall trial strategy, marshaling all available evidence for your client, demonstrating trial lawyering skills, and gaining confidence in your trial skills (all important aspects of Learning Outcome # 4, approved by the NEU faculty in 2016: Demonstrate Awareness of and Recognize the Roles and Ethical, Professional and Business Norms of Law: What Lawyers Do). You should be very proud of your accomplishments in this class.

You surely have the capacity to be a very effective trial lawyer, if that is a personal goal. I wish you much satisfaction and success in your legal career.

Date:	4.25.2023 1:00PM
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Fall 2022 : Marina Jerry - Fall 2022 Apply Direct Alternate Contact for Eval (96942) (U.S. Dept. of Justice, Civil Rights Div., Special Litigation Section (Washington, DC))

EMPLOYER FINAL EVALUATION

Approve Yes

Requested On Dec 12, 2022 8:58 am

Student Marina Jerry

Date Employed From: September 6, 2022

Date Employed To: December 16, 2022

Address 150 M. Street, NE., Washington, DC 20001

Employer Name U.S. Dept. of Justice, Civil Rights Div., Special Litigation Section (Washington, DC)

1) Areas of law engaged in, and level of proficiency Marina was engaged in Civil Rights Law matters that covered abortion rights, corrections, juveniles, and police cases that looked at many different domestic civil rights laws, including CRIPA and constitutional law. From our perspective she was highly proficient in grasping the law.

2) Skills demonstrated during the co-op First, she researched and wrote memos helping attorneys answer legal questions. Second, she developed what we call an "S-10" which is the start of an investigation of a jurisdiction that Special Lit may turn into a public investigation. An "S-10" requires developing facts and applying the law to those facts in an investigative report - one of the hardest things we ask interns to do. Third, she did fact research for us on a variety of topics from abortion to police to corrections. She also presented her work to attorneys in meetings.

3) Professionalism, work ethic, and responsiveness to feedback Marina was incredibly professional, worked extremely hard, was ahead of schedule with assignments, and wonderfully positive in all her interactions with folks in Special Lit. I great representative for Northeastern!

4) Ability to work with colleagues and clients; ability to integrate Marina's peer interns said they loved working with her as did the other attorneys and paralegals. She was also able to bring her insights from past jobs and experiences to her work, which is great to have!

knowledge from other disciplines

5) Further details about the student's performance

Marina is going to go far. She got high marks from every one of our attorney's here. Her works was thorough and often ahead of schedule, and everyone remarked at how positive she is which injects a dose of freshness to the teams here at SPL. We'll miss her!

Submitted by:

Kyle Smiddie

Date submitted:

December 12, 2022

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
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May 25, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Marina Jerry for a clerkship in your chambers. Ms. Jerry was a student in my Legal Skills in Social Context (LSSC) course during her first year in law school. I was so impressed with her performance in that class that I hired her as a Teaching Assistant for the class in her second year. Based on both experiences with Ms. Jerry I can say without reservation that she possesses the intellect, skill, work ethic, and professionalism to be an exceptional law clerk.

Ms. Jerry's performance in LSSC in her first year demonstrated that she has excellent research skills as well as a natural affinity for legal analysis. Ms. Jerry's research for her assignments was always thorough and she was able to identify the relevance of cases that most first year law students would have missed. Similarly, her analysis of how the caselaw could be applied to a set of facts was nuanced; she was always able to see the full range of possible analyses of the issues presented in her assignments. Ms. Jerry's communication skills are similarly impressive. Ms. Jerry came to law school with well-developed, strong writing skills and was able to quickly adapt to the somewhat unique nature of legal writing. Her written work is always clear, concise, well organized, and well supported by legal authority.

The extent of her analytical and writing skills was especially evident when she worked with me as a Teaching Assistant. The students who she assisted made a point of telling me how helpful she was in guiding them to an understanding of the legal issues involved in their assignments as well as identifying areas for growth in their writing. The ability to teach a particular skill to others is a strong indicator of the strength of one's own skills; Ms. Jerry was one of my most successful TAs in this regard.

Ms. Jerry's exceptional intellect and legal skills are also evident from her academic record. As Northeastern does not evaluate student performance with traditional grades, students do not have GPAs or class rank. But, Ms. Jerry's record of obtaining High Honors—the equivalent of an A+—in most of her classes is an incredible achievement that puts her at the very top of her class academically.

Finally, Ms. Jerry is a pleasure to work with, possesses the ability to work independently, and is a consummate professional. In the project portion of the LSSC course during Ms. Jerry's first year, she took on significant responsibility for the team's project, could be counted on to step in when required, and was unwaveringly kind and supportive of her classmates. In short, she was a valued team player. Similarly, while working for me as a TA, I could count on Ms. Jerry to do her work, and do it well, and her positive attitude was infectious. It is not surprising to me at all that her coop employer noted her strong work ethic and positivity in their evaluation of her.

In short, Ms. Jerry is an intelligent, skilled, and lovely human being who would make an outstanding law clerk. I consider myself lucky to have had the opportunity to work with her and recommend her without hesitation. If you should have any questions, please feel free to contact me.

Sincerely,

Carol R. Mallory
Teaching Professor
c.mallory@northeastern.edu
617-373-5841

Carol Mallory - c.mallory@northeastern.edu - 6173735841



U.S. Department of Justice
Civil Rights Division

*Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530*

The Honorable Jamar Walker, District Judge
U.S. District Court, Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I write this letter of recommendation in support of Marina Jerry, who is applying for a position with your chambers. Ms. Jerry worked as an intern with the Special Litigation, Civil Rights Division of the Department Justice in the fall of 2022, and quickly established herself as an exemplary intern with great legal research and writing skills.

The Special Litigation Section has the authority, pursuant to the Crime Control and Law Enforcement Act, 34 U.S.C. § 12601, to investigate allegations that law enforcement agencies are engaging in a pattern or practice of conduct that violates the Constitution or laws of the United States. The Section also has the authority under Section 12601 to investigate allegations that governmental agencies with the responsibility for the administration of juvenile justice or the incarceration of juveniles are engaging in a pattern or practice of unconstitutional conduct. If the Section finds reasonable cause to believe that such a pattern or practice exists, we have the authority under Section 12601 to sue for equitable and declaratory relief to remedy the pattern or practice. Our work focuses on unconstitutional conduct by police departments, prosecutor offices, and juvenile judges, and includes addressing patterns or practices of unlawful discrimination.

As a trial attorney with the Special Litigation Section, I had the opportunity to work closely with Ms. Jerry, who was assigned as an intern to one of my police accountability cases. I reviewed and supervised many of her assignments for the case. I found Ms. Jerry's work product to be thoughtful, well-researched, concise, and very well written. She had a keen grasp of the underlying issues involved in each assignment, and her legal research and memoranda demonstrated her ability to think critically about complex legal matters. Ms. Jerry also completed assignments very quickly, turning them around days, and sometimes weeks, before the assignment was due.

Ms. Jerry is kind, smart, and very efficient. She is an excellent writer, and I have no doubt that she would be an asset to you if hired. Please feel free to contact me at (202) 532-5131 if you have any questions.

Sincerely,

Nicole Porter

Nicole Porter
Trial Attorney



Northeastern University School of Law

United States District Court
Via: OSCAR system

May 25, 2023

Re: RECOMMENDATION LETTER FOR MARINA JERRY

Dear Judge:

It is my great pleasure to write to you to recommend my former student, Marina Jerry for a clerkship in your office. I am a Professor at Northeastern University School of Law and Boston University School of Law. I am admitted to the Bars of Massachusetts, New York, Pennsylvania and Venezuela.

I have known Marina since August of 2022. She was my student in the Cradle to Prison Pipeline course that I have taught at Northeastern since 2019. The course combines a traditional legal research and writing curriculum with a social justice component in which students examine in depth the root causes of mass incarceration in the United States and research possible solutions.

Marina is an excellent communicator. She has an ability to identify areas of weakness in a case and has very good legal reasoning, writing and speaking skills, she is very articulate both in writing and in oral presentations. Marina is also extremely kind and able to get along with just about anyone. She is polite, caring and very thoughtful and also very good at recognizing when she needs assistance and is comfortable seeking help when needed. Marina has also demonstrated ability working with multidisciplinary subjects.

Marina is a very confident individual and welcomes guidance and supervision, responds very well to feedback and will follow direction with no problem at all.

I believe Marina has everything needed to succeed as an attorney and would be a great addition to your clerkship program. She has always upheld high ethical standards and the courts will absolutely benefit from her participation and future admission to the Bar, reason why I strongly support her application and recommend her for the position.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Liliana Mangiafico", written in a cursive style.

Santina Liliana Mangiafico
MA BBO 652874



Northeastern University

School of Law

MARINA JERRY

103 Seelye Drive, Burnt Hills, NY 12027 | (518) 429-1520 | jerry.m@northeastern.edu

WRITING SAMPLE

This writing sample is an edited excerpt from a brief written for a legal research and writing class. The brief is a plaintiff's response to a defendant's motion for summary judgment on two claims under Title VII of the Civil Rights Act of 1964 — an employment discrimination claim and a hostile work environment claim. Michael Kowalski, the plaintiff, is a custodian employed by Spotless, Inc. Spotless, Inc., the defendant, is a corporation that provides janitorial services to schools.

I independently conducted the research necessary for this brief. Although my professor provided me with general feedback on my first draft of this brief, the writing contained in this final product is entirely my own.

ARGUMENT

Defendant's Motion for Summary Judgment should not be granted because there are genuine issues of material fact on both the Title VII employment discrimination claim and the Title VII hostile work environment claim.

Summary judgment is only appropriate when there are no genuine issues of material fact. *Hanover Ins. Co. v. N. Bldg. Co.*, 751 F.3d 788, 791 (7th Cir. 2014). In determining whether a genuine issue of material fact exists, the court should view all evidence in favor of the nonmoving party. *Id.*

Kowalski alleges disparate treatment under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2. Kowalski has brought both a Title VII employment discrimination claim and a Title VII hostile work environment claim. Defendant suggests that summary judgment is appropriate on the employment discrimination claim because, as a matter of law, Kowalski did not suffer an adverse employment action. Defendant also indicates that summary judgment is appropriate on the hostile work environment claim because (1) Kowalski did not face harassment so severe or pervasive that it altered the conditions of his employment, and (2) Defendant should not be held liable for the harassment. However, issues of material fact exist as to whether Kowalski suffered an adverse employment action, whether the harassment he experienced was sufficiently severe or pervasive to alter the conditions of his employment, and whether Defendant should be held liable for the harassment. These issues must go to the jury; therefore, Defendant's Motion for Summary Judgment should be denied.

I. SUMMARY JUDGMENT ON THE EMPLOYMENT DISCRIMINATION CLAIM IS NOT APPROPRIATE BECAUSE THERE IS AN ISSUE OF MATERIAL FACT AS TO WHETHER KOWALSKI SUFFERED A COGNIZABLE ADVERSE EMPLOYMENT ACTION.

An adverse employment action exists when a defendant takes an action that materially alters the terms and conditions of the plaintiff's employment. *Herrnreiter v. Chi. Hous. Auth.*, 315 F.3d 742, 744 (7th Cir. 2002). This change to the terms and conditions of plaintiff's employment must be more than simply an inconvenience or an alteration of the plaintiff's job responsibilities. *Id.* at 742. The court has articulated several general categories of materially adverse employment actions actionable under Title VII, including (1) cases in which the employee's compensation or other financial terms of employment are reduced and (2) cases in which the employee is not moved to a different job and the skill requirements of her present job are not altered, but where the employment conditions are changed to expose her to a humiliating, degrading, unsafe, unhealthful, or otherwise negative workplace environment. *Id.* at 744. To determine whether an employment action is so significant as to materially alter the terms or conditions of employment, the court may consider other indices unique to the situation. *Crady v. Liberty Nat. Bank and Tr. Co. of Ind.*, 993 F.2d 132, 136 (7th Cir. 1993).

Denial of a wage raise has been considered a material alteration of the terms and conditions of employment when the raise is expected by the employee and the employee has performed satisfactorily. *Hunt v. City of Markham*, 219 F.3d 649, 654 (7th Cir. 2000). In such a situation, the denial of a wage request may be considered a reduction in wages, as a raise is necessary to offset the impact of inflation. *Id.* In *Hunt v. City of Markham*, a plaintiff brought an employment discrimination claim, alleging that she was denied an expected wage raise despite the fact that she performed satisfactorily. *Id.* at 651. The *Hunt* court refused to dismiss the

plaintiff's employment discrimination claim, finding that the denial of a raise request under the circumstances could be considered an actionable adverse employment action. *Id.* at 654.

A change to an employee's job responsibilities may also be considered by the court to be a material alteration of the terms and conditions of employment when the change is so significant that it effectively results in a demotion. *Tart v. Ill. Power Co.*, 366 F.3d 461, 473 (7th Cir. 2004). In *Tart v. Illinois Power Co.*, the court found that an adverse employment action existed when service technicians were reassigned duties. *Id.* Despite the fact that the plaintiffs retained their titles, salaries, and benefits, the court found that the plaintiffs were effectively demoted because their reassigned roles involved significantly harsher working conditions than their prior positions. *Id.* Before the reassignment, the service technicians engaged in skilled labor. *Id.* After the reassignment, the service technicians were forced to engage in difficult and degrading manual labor. *Id.* The court applied an objective test to analyze the change to job responsibilities, finding that a cognizable adverse employment action exists when a reasonable worker would not voluntarily choose to undergo such a reassignment. *Id.* Ultimately, the court found that the plaintiffs experienced a cognizable adverse employment action because they were reassigned to an objectively inferior position, as no reasonable worker would prefer the reassigned duties. *Id.* at 474.

A jury could reasonably find that the denial of Kowalski's wage request was a material alteration of the terms or conditions of his employment because the denial effectively diminished Kowalski's compensation over time. There is significant evidence in the record that indicates that Kowalski performed satisfactorily. Kowalski's performance evaluations by his prior supervisor indicate that Kowalski's job performance was stellar. Under this supervisor, Kowalski was evaluated on a ten-point scale in both 2018 and 2019, and received a "nine" or "ten" on each

evaluation. While Kowalski did receive unsatisfactory performance evaluations under his current supervisor in 2020 and 2021, these evaluations are likely a manifestation of the harassment that Kowalski has experienced at the hands of this supervisor, as described at length in Kowalski's hostile work environment claim. There is also significant evidence in the record that demonstrates that Kowalski reasonably expected a raise. When deposed, Kowalski's current supervisor stated that he had given raises to most of Kowalski's coworkers in the past two years. Kowalski also indicated that he received a raise during his first year of employment with Defendant. These assertions indicate that regular raises are typical for custodians, and that Kowalski reasonably expected such raises. Like the *Hunt* plaintiff, who performed satisfactorily and reasonably expected a wage raise but was denied one for over two years, Kowalski has put forth evidence to demonstrate that he performed satisfactorily and reasonably expected a raise, but was repeatedly denied one over the course of two years. The *Hunt* court found that summary judgment on the plaintiff's claim was not appropriate because the denial of a wage request could be considered an adverse employment action by a jury; similarly, this Court should allow the jury to determine whether the denial of Kowalski's wage request constituted an adverse employment action.

A jury could also reasonably find that Kowalski suffered a cognizable adverse employment action when he was reassigned to clean the Commons area of campus. The unique indices of Kowalski's employment indicate that he suffered a change to the terms and conditions of his employment, rather than simply an alteration of employment duties, when his supervisor reassigned him to the Commons. Like the *Tart* plaintiffs, Kowalski retained his salary and title after the reassignment, but his job duties were changed to involve harsher, inferior, and degrading working conditions. Kowalski's reassignment required him to regularly engage in the

degrading task of cleaning the vomit and urine of intoxicated students, a task which would never be required of him in his previous Admissions Office assignment. Kowalski has alleged that his reassignment was objectively unfavorable; applying the standard set forth in *Tart*, it is quite clear that no reasonable person would prefer the Commons reassignment. Therefore, like the *Tart* court, this Court should allow the jury to determine whether Kowalski's reassignment to the Commons constitutes an adverse employment action.

Because there is evidence in the record to suggest that the denial of Kowalski's wage request and his transfer to the Commons could both constitute material alterations of the terms or conditions of Kowalski's employment, the question of whether Kowalski suffered an adverse employment action should go to the jury.

II. SUMMARY JUDGMENT ON THE HOSTILE WORK ENVIRONMENT CLAIM IS NOT APPROPRIATE BECAUSE THERE ARE ISSUES OF MATERIAL FACT AS TO (1) WHETHER THE HARASSMENT KOWALSKI EXPERIENCED WAS SEVERE OR PERVASIVE AND (2) WHETHER DEFENDANT SHOULD BE HELD LIABLE FOR THE HARASSMENT.

An employer will be held liable for a hostile work environment under Title VII when an employee demonstrates that (1) their work environment was objectively and subjectively offensive, (2) they experienced harassment based on a protected characteristic, (3) the harassment was severe or pervasive, and (4) there is a basis for employer liability. *Vance v. Ball State Univ.*, 646 F.3d 461, 461 (7th Cir. 2011). Defendant has moved for summary judgment on the hostile work environment claim, suggesting that Kowalski did not experience severe or pervasive harassment as a matter of law, and that even if Kowalski did experience such harassment, Defendant should not be held liable for the harassment. However, summary judgment is not appropriate because there are issues of material fact as to (1) whether the

harassment Kowalski experienced was severe or pervasive, and (2) whether Defendant should be held liable for the harassment.

1. A jury could reasonably find that the harassment Kowalski experienced was severe or pervasive.

To be cognizable under Title VII, harassment must be severe or pervasive. Severe or pervasive harassment must be both subjectively and objectively offensive. *Johnson v. Advocate Health and Hosps. Corp.*, 892 F.3d 887, 900 (7th Cir. 2018). Harassment is subjectively offensive if the plaintiff does not welcome the conduct. *Hrobowski v. Worthington Steel Co.*, 358 F.3d 473, 476-77 (7th Cir. 2004). Harassment is objectively offensive if it alters the terms or conditions of the plaintiff's employment. *Cerros v. Steel Tech., Inc.*, 288 F.3d 1046, 1046 (7th Cir. 2002). To determine whether harassment is objectively offensive, a court will examine the totality of the circumstances. *Id.* These circumstances may include the frequency of the harassing conduct, the severity of the conduct, whether the conduct is physically threatening or humiliating, and whether the conduct significantly interferes with an employee's work performance. *Johnson*, 892 F.3d at 900. Teasing, offhand comments, and isolated incidents do not constitute severe or pervasive harassment. *Hrobowski*, 358 F.3d at 476. However, offensive conduct that is physical in nature, openly racist, or that unreasonably interferes with the plaintiff's work performance may be found to be severe or pervasive. *Alexander v. Casino Queen, Inc.*, 739 F.3d 972, 982 (7th Cir. 2014).

Harassment by coworkers may be found to be severe or pervasive if the harassment involves the use of slurs and offensive physical conduct. *Alamo v. Bliss*, 864 F.3d 541, 550 (7th Cir. 2017). In *Alamo v. Bliss*, the court found that harassment could be considered severe or pervasive when it involved (1) two racial slurs targeting the plaintiff, (2) repeated instances of

the plaintiff's food being thrown out or eaten by his coworkers, and (3) two physical altercations, one involving a "chest bump" and one involving the plaintiff being pushed against a wall. *Id.* But see *Nichols v. Mich. City Plant Plan. Dep't.*, 755 F.3d 594, 601 (7th Cir. 2014) (finding that a single utterance of the word "n****r" as well as several instances of offensive physical conduct by plaintiff's coworker did not constitute severe or pervasive harassment because "one utterance...has not generally been held to be severe enough to rise to the level of establishing liability.").

The court considers harassment to be particularly severe when it involves a supervisor's use of slurs to harass an employee. *Rodgers v. W.-S. Life Ins. Co.*, 12 F.3d 668, 675 (7th Cir. 1993). A supervisor's use of slurs to harass an employee may constitute severe or pervasive harassment even if the supervisor has not engaged in any offensive physical conduct. *Id.* In *Rodgers v. Western-Southern Life Insurance Co.*, the court found that the use of racially derogatory terms by a supervisor on several occasions throughout the course of plaintiff's employment created a hostile work environment actionable under Title VII, suggesting that "no single act can more quickly 'alter the conditions of the working environment'" than the use of a racial epithet by a supervisor towards an employee. *Id.* The *Rodgers* court found that the supervisor's verbal harassment of a subordinate—consisting of two utterances of the word "n****r," a statement that "you black guys are too fucking dumb to be insurance agents," and another statement that "you must think you're back in Arkansas chasing jack rabbits"—was sufficient to constitute severe or pervasive harassment. *Id.* at 675-76.

A jury could reasonably find that Kowalski experienced severe or pervasive harassment because the harassment he experienced could be considered subjectively and objectively offensive. Kowalski's deposition indicates that the harassment was clearly subjectively

offensive. Kowalski submitted complaints about the harassment to management at least once a week for several months, and his deposition testimony clearly demonstrates that he did not welcome the conduct—according to Kowalski, the harassment was “beyond [a] joke.” Kowalski Dep. 8.

A jury could reasonably find that the harassment perpetrated by Johnson, Kowalski’s supervisor, was objectively severe or pervasive. Like the supervisor in *Rodgers*, who used two slurs and two other statements motivated by animus to harass a subordinate, Johnson frequently used the slur “Polack” to refer to Kowalski and repeatedly told Kowalski that he should “go back to Poland.” Kowalski Dep 8. The *Rodgers* court found that four instances of verbal harassment by a supervisor was sufficient to constitute severe or pervasive harassment; therefore, a jury could reasonably find that the harassment Kowalski experienced at the hands of his supervisor constituted severe or pervasive harassment.

A jury could also reasonably find that the harassment perpetrated by Kowalski’s coworkers was objectively severe or pervasive. Like the harassment in *Alamo*, which the court found to be severe or pervasive, the harassment perpetrated by Kowalski’s coworkers involved slurs and offensive physical conduct. Kowalski was subjected to a daily stream of slurs, including the incessant use of the term “Polack.” Kowalski’s coworkers also used a variety of other derogatory terms to belittle his national origin, repeatedly referring to him as “Pole-alski” and a “commie bastard.” The frequency and numerosity of these slurs and derogatory comments indicates that the verbal harassment Kowalski faced was even more pervasive than the two slurs directed at the *Alamo* plaintiff. Moreover, like the harassment in *Alamo*, the harassment Kowalski experienced involved multiple instances of offensive physical conduct perpetrated by coworkers. Kowalski’s coworkers intentionally locked him outside of the Commons in the cold,

frequently threw cleaning supplies at him, and strategically put polish on the floor so that he would slip. This physical harassment is certainly more pervasive than the two isolated incidents of physical harassment in *Alamo*, and likely more severe as well; unlike the harassment in *Alamo*, the harassment that Kowalski experienced resulted in physical injury and impacted his work performance. When Kowalski's coworkers put polish on the floor, Kowalski fell and injured his hip. Kowalski was instructed by his doctor to avoid lifting heavy things, limiting his ability to adequately complete his custodial responsibilities. The harassment that Kowalski experienced was at least as severe and pervasive as the harassment experienced by the *Alamo* plaintiff; therefore, like in *Alamo*, this Court should allow the jury to determine whether the harassment perpetrated by Kowalski's coworkers constitutes an adverse employment action.

Because there is evidence in the record to suggest that the harassment perpetrated by Kowalski's supervisor and coworkers was both subjectively and objectively offensive, the question of whether Kowalski experienced severe or pervasive harassment should go to the jury.

Applicant Details

First Name **Michael**
Middle Initial **H**
Last Name **Jeung**
Citizenship Status **U. S. Citizen**
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Address
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438 Elder Drive
City
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State/Territory
California
Zip
91711
Country
United States

Contact Phone Number **909-776-5511**

Applicant Education

BA/BS From **University of Southern California**
Date of BA/BS **May 2020**
JD/LLB From **The University of Chicago Law School**
<https://www.law.uchicago.edu/>
Date of JD/LLB **June 1, 2024**
Class Rank **School does not rank**
Law Review/Journal **Yes**
Journal(s) **The University of Chicago Law Review**
Moot Court Experience **Yes**
Moot Court Name(s) **Hinton Moot Court Board Member**

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Casey, Anthony
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Siegler, Alison
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Kovvali, Aneil
akovvali@iu.edu
773-702-9494

This applicant has certified that all data entered in this profile and any application documents are true and correct.

The Honorable Jamar K. Walker
 United States District Court, Eastern District of Virginia
 Walter E. Hoffman U.S. Courthouse
 600 Granby Street
 Norfolk, VA 23510

Michael H. Jeung
 438 Elder Drive,
 Claremont, CA 91711
 (909) 776-5511
 mjeung@uchicago.edu

June 12, 2023

Dear Judge Walker:

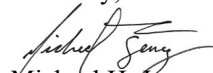
I am a rising third-year law student at the University of Chicago Law School applying for a 2024–2025 term clerkship or the next available term in your chambers. My desire to clerk stems from my six years of experience competing in, coaching, and judging mock trial and moot court, during which I discovered a passion for creating and dissecting arguments. My time in law school has similarly been filled with intellectual exploration and ideation, skills that I hope to continue developing as a clerk. My experiences in both my law school’s Federal Criminal Justice Clinic and the Los Angeles U.S. Attorney’s Office focused my public service goals towards the federal criminal justice system. I admire your wealth of experience as a Covington alumnus, Assistant United States Attorney, and district judge who has presided over important and consequential cases. I share your commitment to public service and hope to learn from your mentorship.

I have watched close family members struggle with severe mental health issues for most of my life—issues that law enforcement and the criminal justice system struggle to handle. I want to clerk for you to develop an understanding of how our communities can more effectively handle our most disadvantaged members. I have volunteered since college in diversion programs such as Public Counsel CARES, the ABA’s Pro Bono Asylum Representation Project, and free tutoring centers during COVID remote schooling. As a current student in the Federal Criminal Justice Clinic, I have sought to improve our criminal justice system through writing memoranda on issues of compassionate release and habeas petitions, rewriting local pre-trial detention rules to better reflect the law, leading a data team and conducting research for the *Freedom Denied* Report, writing and editing template motions, and more. Clerking for you in the Eastern District of Virginia, with its uniquely expeditious “rocket docket,” would be an invaluable opportunity to build on my experience with daily exposure to first-rate advocacy and legal analysis in both criminal and civil matters.

Other experiences in law school have similarly sharpened my legal writing and my analytical thinking. My Law Review comment addressed two circuit splits on adjacent issues of compassionate release. My proposed solution relied on the U.S. Sentencing Commission’s recent policy statement and judicial retroactivity drawn from other areas of law, including habeas petitions and SEC adjudications. As a moot court board member, I reviewed briefs and oral arguments for pending Supreme Court cases, drafted bench memoranda, and created incisive questions on points of legal tension in those cases. My time with the U.S. Attorney’s Office this past summer demonstrated to me the importance of humility in receiving and implementing critical feedback—hard work that culminated in the opportunity to draft an argumentative brief for the Ninth Circuit. Collectively, these experiences challenged me to engage in complex legal analyses, draw from authorities outside the judiciary, and apply first principles to complex issues.

Please find my resume, writing sample, references, and law transcript attached for your review. My letters of recommendation from Professor Alison Siegler, Professor Aneil Kovvali, and Professor Anthony Casey will arrive under separate cover. Thank you in advance for your consideration.

Sincerely,


 Michael H. Jeung

Michael H. Jeung

438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

EDUCATION

The University of Chicago Law School

Juris Doctor Candidate

Chicago, IL

June 2024

- The University of Chicago Law Review, *Online Editor*
- Hinton Moot Court, *Board Member*
- Asian Pacific American Law Students Association (APALSA), *President*

University of Southern California

Bachelor of Arts in Political Science, magna cum laude

Los Angeles, CA

May 2020

- USC Moot Court Team, *Co-founder*
- USC Mock Trial Team, *Competitor*

WORK AND RESEARCH EXPERIENCE

Judge John Kronstadt, United States District Court, Central District of California

Judicial Extern

Los Angeles, CA

July 2023

Covington & Burling LLP

Summer Associate

Los Angeles, CA

May 2023 – Present

- Drafted memoranda on anti-SLAPP laws in state and federal court

Federal Criminal Justice Clinic, The University of Chicago Law School

Project Manager

Chicago, IL

April 2021 – Present

- Researched criminal procedure issues and drafted related memoranda for possible future impact litigation
- Managed a team of researchers in coding court watching notes and PACER filings for data analysis
- Edited speeches and presentations for nationwide trainings on proper pretrial practice, rewrote local rules on pretrial detention, and researched the legal implications of pretrial policy changes
- Created flowcharts to guide judges and defense counsel through initial appearances and detention hearings
- Wrote and edited template motions, incorporating Administrative Office H-Table data

Professor William Hubbard, The University of Chicago Law School

Research Assistant

Chicago, IL

August 2022 – Present

- Reviewed Professor Hubbard's Civil Procedure teacher's manual for both form and substance

United States Attorney's Office, Central District of California

Legal Extern

Los Angeles, CA

June 2022 – August 2022

- Wrote an answering brief to the Ninth Circuit on legal issues of clear error and reconsideration of precedent
- Updated the internal Fourth Amendment guide with case law on novel anticipatory search warrant issues
- Revised the internal jury trial handbook with recent Ninth Circuit case law
- Conducted legal research for motions to suppress
- Attended trainings on all phases of trial, including opening statements, direct and cross examinations, closing arguments, and objection arguments

VOLUNTEER WORK

Cardinal Education Free Tutoring Center, COVID Tutor

July 2020 – March 2021

Public Counsel CARES, Volunteer

April 2018 – May 2020

ABA's Pro Bono Asylum Representation Project, Trial Assistant

March 2018 – July 2018

Global Fund to Fight AIDS, Tuberculosis and Malaria, Researcher

January 2017 – August 2017

SKILLS AND INTERESTS

Languages: Intermediate Spanish, Rudimentary Korean

Hobbies: Running, muay thai, surfing, snowboarding, LA sports, perfecting recipes for Korean dishes, chess, theater

Michael H. Jeung

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Transcript Note

My father was diagnosed with stage III lung cancer two weeks before my 1L winter quarter final exams. He suffered a severe ischemic stroke less than a week later, resulting in a coma that persisted for several months. I spent this time flying between Chicago and Los Angeles to care for him and support my mother and brothers. My father passed shortly before my 1L spring quarter final exams. After his passing, I withdrew from my Critical Race Studies class after consulting the Dean of Students and my career advisors. I believe that my exam performance does not fully reflect my knowledge and capabilities. I can provide further information if needed. My grade in the Federal Criminal Justice Clinic will not be assigned until graduation, when my involvement in the clinic ends.



Name: Michael H Jeung
Student ID: 12329263

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

University of Southern California
Los Angeles, California
Bachelor of Arts 2020

Beginning of Law School Record

Autumn 2021					
Course	Description	Attempted	Earned	Grade	
LAWS 30101	Elements of the Law William Baude	3	3	177	
LAWS 30211	Civil Procedure Diane Wood	4	4	180	
LAWS 30611	Torts Saul Levmore	4	4	180	
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	181	

Winter 2022					
Course	Description	Attempted	Earned	Grade	
LAWS 30311	Criminal Law Jonathan Masur	4	4	173	
LAWS 30411	Property Aziz Huq	4	4	175	
LAWS 30511	Contracts Douglas Baird	4	4	174	
LAWS 30711	Legal Research and Writing Aneil Kovvali	1	1	181	

Spring 2022					
Course	Description	Attempted	Earned	Grade	
LAWS 30712	Legal Research, Writing, and Advocacy Aneil Kovvali	2	2	180	
LAWS 30713	Transactional Lawyering David A Weisbach	3	3	175	
LAWS 43220	Critical Race Studies William Hubbard	3	0	W	
LAWS 44201	Legislation and Statutory Interpretation Farah Peterson	3	3	177	
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	176	

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 42301	Business Organizations Anthony Casey	3	3	179
LAWS 46501	Federal Criminal Law Sharon Fairley	3	3	179
LAWS 53445	Advanced Criminal Law: Evolving Doctrines in White Collar Litigation Thomas Kirsch	3	3	179
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	174
LAWS 43234	Bankruptcy and Reorganization: The Federal Bankruptcy Code Anthony Casey	3	3	177
LAWS 46101	Administrative Law David A Strauss	3	3	174
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	2	0	
LAWS 94110	The University of Chicago Law Review Anthony Casey	2	2	P

Spring 2023

Course	Description	Attempted	Earned	Grade
LAWS 43201	Comparative Legal Institutions Thomas Ginsburg	3	3	178
LAWS 43212	Federal Habeas Corpus Taylor Meehan Adam Mortara	2	2	179
LAWS 47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	177
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	2	0	
LAWS 94110	The University of Chicago Law Review Req Meets Substantial Research Paper Requirement Designation: Anthony Casey	1	1	P

End of University of Chicago Law School

OFFICIAL ACADEMIC DOCUMENT



THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

I	Incomplete: Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
IP	Pass (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
NGR	No Grade Reported: No final grade submitted
P	Pass: Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
Q	Query: No final grade submitted (College only)
R	Registered: Registered to audit the course
S	Satisfactory
U	Unsatisfactory
UW	Unofficial Withdrawal
W	Withdrawal: Does not affect GPA calculation
WP	Withdrawal Passing: Does not affect GPA calculation
WF	Withdrawal Failing: Does not affect GPA calculation
	Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

H	Honors Quality
P*	High Pass
P	Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
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Revised 09/2016

Professor Anthony J. Casey
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June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Michael Jeung for a clerkship in your chambers. Michael is a great student with the promise to be an accomplished lawyer.

Michael was a student in my Business Organizations class in the fall and my Bankruptcy class in the winter. His in-class participation in both classes was superb. He was eager about the reading and the topics and always willing to jump in to field a hard question. His comments in class demonstrated an unusually strong grasp of the difficult legal issues in the readings. There were no instances when Michael came to class unprepared.

Outside of class, Michael is equally impressive. I have spent many hours over coffee discussing complicated bankruptcy or corporate law issues with Michael. I find that I learn as much as he does from these discussions. He always brings a creative and fresh viewpoint to old problems. This skill will be a great asset to any chambers.

Michael's success in law school is even more impressive given some of the challenges he has faced over the last two years. Michael's father became suddenly ill and passed away during his first year of law school. As one can imagine, this was a great burden on Michael. Michael responded admirably providing support for his mother and family while continuing on with his law school studies. Not surprisingly, Michael's grades suffered mildly during that time, showing a higher variance in the Winter and Spring of his 1L year. I urge you to consider Michael's case more holistically focusing on what he was able to accomplish while dealing with these personal stresses and not his particular grades during those quarters. Michael loves the study of law, excels at it, and has a strong work ethic that is clear from his accomplishments to date.

I think he will be a great addition to your chambers. And I recommend him with high praise.

Very truly yours,
Anthony J. Casey

Anthony Casey - ajcasey@uchicago.edu - 773-702-9578



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Alison Siegler
Clinical Professor of Law
Director, Federal Criminal Justice Clinic

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation for Michael Jeung

Dear Judge Walker:

I enthusiastically recommend Michael Jeung for a clerkship in your chambers. Over the course of the past two years, I have worked closely with Michael and have observed first-hand his legal acumen, diligence, strong legal writing and analysis, and commitment to his fellow Clinic students.

Immediately after being accepted to the Law School and visiting a class of mine as an admitted student, Michael proactively reached out and asked if he could contribute to my Clinic's work. At the time, my students and I were gathering empirical data on federal bail practices via court-watching. I was so impressed by Michael's initiative and motivation, as well as his genuine interest in contributing to our work, that I did something unusual—I brought Michael onto my Federal Bailwatching Project before he was even officially enrolled at the law school. Michael soon proved himself to be an invaluable member of the team and ultimately became a Project Manager, overseeing data collection for the first comprehensive national investigation of federal pretrial detention. Thanks in part to Michael's significant contributions, our Clinic recently issued a report entitled *Freedom Denied: How the Culture of Detention Created a Federal Jailing Crisis*.

In the summer of 2021, Michael quickly took on a leadership role, although he was participating on an entirely pro-bono basis. Michael became a Project Manager and dedicated himself entirely to ensuring the project's success, devoting long days, nights, and weekends over what would otherwise have been his summer vacation before starting law school. During that summer, Michael trained a group of undergraduate interns to use PACER and input case data into our spreadsheets to augment the data we had gathered through court-watching. Because much of this stage of the project was new, Michael and I worked closely together in crafting the protocols for this process. He then supervised the interns as they scoured PACER to gather and code data into our spreadsheets from the docket sheet, complaint, indictment, case summary, and detention/release order in each of the observed cases. In his role as Project Manager, Michael also demonstrated organizational skills,

keeping minutes in team meetings and organizing our discussions into future tasks to follow up on. Michael was responsive to feedback and quickly committed himself to improving in the face of any critique, a rare trait.

During this time, Michael also showed that he had the makings of a strong leader. When the interns he was supervising performed well, he acknowledged their successes; when their work fell short, he provided constructive and compassionate critiques, addressing shortcomings as they arose to ensure that everything continued to run smoothly.

Michael continued to provide pro bono assistance to the Clinic during his 1L year. During that same time, Michael suffered a serious loss—his father fell into a coma in the winter quarter and passed away at a young age in the spring. Michael came back to work with the Clinic shortly after this sudden tragedy, taking on an editorial role with our Freedom Denied Report. Michael has confided in me that his grades dipped significantly during this time because of the demands of flying back home every other week to visit his father and take care of his family. Despite these trying circumstances, Michael earned a position on the Law Review. Michael has also continued to remain engaged with the broader Law School community, earning positions as an Online Editor on the Law Review's executive board, as a board member for the Hinton Moot Court, and as President of the Asian Pacific American Law Students Association.

Over the course of the past academic year, Michael has continued to perform excellent work in the Clinic, demonstrating attention to detail and efficiency across many demanding assignments. I tasked Michael with writing a research memo examining a tricky legal issue—whether the mootness doctrine would effectively bar litigation challenging an aspect of the bail process. Michael demonstrated strong legal research and analysis skills in the memo. The subject matter was complex, requiring Michael to parse case law in many jurisdictions that could serve as potential venues for future impact litigation. In addition, Michael updated and wrote parts of several motions for federal pretrial release. He also helped rewrite a proposed Local Rule for one federal district court.

Michael's most recent project involved preparing for and giving an oral presentation to Senator Durbin about our Report's findings. I was very impressed by Michael's oral advocacy skills. During the course of Michael's presentation, the Senator asked him an important question about the data he was presenting regarding federal magistrate judges' failure to follow the letter of the Bail Reform Act during initial appearance hearings. Michael gave a terrific off-the-cuff response that not only answered the Senator's question but also conveyed an additional nuance of our findings.

Michael's clinic work has also included less traditional assignments that have enabled him to hone various skills and competencies that will serve him well as a law clerk and lawyer. For example, Michael created large flowcharts to help guide federal judges and criminal defense attorneys through the complex maze of the Bail Reform Act, demonstrating mastery over the pretrial stages of the federal criminal process. Additionally, Michael has written and edited numerous speeches and PowerPoint presentations, including for several national federal judicial seminars hosted by the Federal Judicial Center. Michael incorporated new data from

our Report, drew on AO statistics, and created visual figures and slides with a thoughtful eye to how best to convey the material. For another project, Michael and another clinic student deftly drew on statistics to calculate the quantitative impacts of our team's work under numerous different hypothetical future conditions.

These assignments and many more expected a lot of Michael, and he consistently delivered top-notch work product. He did so efficiently, promptly responding to feedback and completing projects quickly under time pressure. Throughout his time in the Clinic, Michael has displayed an admirable ability to handle a large volume of work quickly and well.

Michael plans to use the valuable skills he has developed with the Clinic in a career in public service. Michael has been committed to public service since he reached out to me before his enrollment at the law school. After working at the U.S. Attorney's Office during his 1L summer, he is interested in practicing federal criminal law.

Beyond his work abilities, Michael is a unique and irreplaceable presence in the Clinic. He is very close friends with the other students and has a bright and cheerful presence. He is cooperative, respectful, and collaborative. He works very well with others and is a team-player of the highest order; Michael will readily dedicate more time to a task to take work off a team member's plate. Furthermore, Michael goes out of his way to praise his coworkers' accomplishments and acknowledge others for their valued contributions.

For all of these reasons, Michael will be a terrific law clerk and a great asset to your chambers. If you would like to discuss his qualifications and accomplishments further, please do not hesitate to contact me at (773) 909-2011 or alisonsiegler@uchicago.edu.

Sincerely,



Alison Siegler
Clinical Professor of Law
Director, Federal Criminal Justice Clinic

Aneil Kovvali
Associate Professor of Law
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June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Michael Jeung's application for a clerkship in your chambers.

Michael was a student in my 1L legal research and writing class at the University of Chicago Law School during the 2021 to 2022 academic year. I have a high regard for Michael's research, analysis, and writing abilities, which is reflected in his grade.

Apart from having a great intellectual toolkit, Michael also has the right temperament to contribute in chambers. Michael always asked thoughtful and useful questions in class and at office hours. Michael was also very interested in helping his fellow students. In class, we often broke up into small groups so that students could workshop their writing together. Whenever I stopped to listen in on his group, I would overhear him offering helpful and generous comments to his peers. Strong students are often competitive or eager to monopolize classroom discussion. But Michael genuinely seemed to want to see the whole class improve.

I would also note that Michael overcame very challenging circumstances during his 1L year. During the spring term, Michael's father became ill and passed. This happened shortly before important deadlines in my class, and only a few weeks before finals in his other classes.

While it was obvious from interactions outside class that he was deeply hurt by these developments, his performance within class was remarkable. I graded his written work anonymously and found it to be very strong. He also delivered truly excellent oral arguments: he was well-versed in the facts and law, polished and professional in his presentation, and thoughtful in his responses to tough questions. If I knew nothing else about him or his circumstances, I would happily support his application just on the strength of his work. Knowing of his challenges gives me absolute confidence that he will deliver excellent work even under the toughest circumstances.

Thank you for your consideration. If there is any way that I can be helpful in your evaluation of Michael, please do not hesitate to let me know. I will be transitioning to the Indiana University Maurer School of Law, but can be reached via email at akovvali@iu.edu and on my mobile (609) 902-8571.

Sincerely,
Aneil Kovvali

Aneil Kovvali - akovvali@iu.edu - 773-702-9494

Michael H. Jeung

438 Elder Dr., Claremont, CA 91711 | 909-776-5511 | mjeung@uchicago.edu

I prepared the attached writing sample for a work assignment at the United States Attorney's Office in Los Angeles this summer. I was tasked with drafting a Ninth Circuit brief on behalf of the government in response to defendant-appellant's challenge against the denial of his motion to suppress. I changed all names, locations, and other identifying information to fictional counterparts. I deleted sections that did not demonstrate my writing, such as the cover page, table of contents, certificate of compliance, statement of jurisdiction and timeliness, statement of related cases, and conclusion. I did not receive editing suggestions from any attorneys or coworkers.

INTRODUCTION

Defendant Jon Snow is a documented member of the Night's Watch gang with a history of firearm and drug possession. In January 2020, officers pulled over his Chevy Tahoe after they observed multiple, undisputed traffic violations. While the officers were waiting for Defendant to comply with their lawful commands to exit the car—which he initially refused—Defendant admitted that he had “dope” on him. The officers then conducted searches of Defendant's person and car that revealed over 40 grams of methamphetamine and a loaded firearm. Defendant argues that the district court erred in denying his motion to suppress this evidence. But the district court properly found that the officers acted reasonably in questioning Defendant and conducting the searches. And as Defendant concedes, most of his challenges are foreclosed by binding precedent. Accordingly, this Court should affirm the denial of the motion to suppress.

ISSUES PRESENTED

1. Whether the district court clearly erred in finding (1) that Officer Lannister's questioning was covered by a public safety concern, and (2) that Officer Baratheon had probable cause when methamphetamine was found in Defendant's right front pants pocket.
2. Whether, given those facts, the court properly denied Defendant's motion to suppress.

STATEMENT OF THE CASE

A. The Offense Conduct

The offense conduct occurred on the night of January 19, 2020. Westeros Police Department (WPD) Officers Lannister, Baratheon, and Stark were patrolling a “high crime area” that is known to be “frequented by the Night's Watch gang.” (1-ER-17). The officers saw Defendant's Chevy Tahoe exit a parking lot and noticed that “its front passenger side window

was tinted in violation of [California Vehicle Code § 26708(d)].” *Id.* The officers also noticed that a tow hitch was obscuring the license plate, a violation of California Vehicle Code § 5201. (1-ER-220). The officers conducted a records check on the Tahoe which revealed that the vehicle belonged to Defendant, who the officers knew to be a Night’s Watch gang member. (1-ER-221).

Officer Lannister has spent the last six to seven years “almost exclusively” working the Night’s Watch gang, the “largest gang in Westeros consisting of about 700 to 800 members.” (1-ER-219). As such, Officer Lannister is well acquainted with the Night’s Watch gang’s involvement in violent crimes and drug trade. (1-ER-219). The officers had previously encountered Defendant in the past and knew that he was a Night’s Watch gang member. (1-ER-17). In 2017, Officer Lannister arrested Defendant for unlawfully possessing a firearm that was discovered in his waistband. *Id.* In 2019, Officers Lannister and Baratheon stopped Defendant’s car and found methamphetamine in his possession. *Id.*

The officers initiated the traffic stop, with Officer Baratheon approaching Defendant’s driver-side window and Officers Lannister and Stark approaching the passenger-side window. *Id.* The officers informed Defendant that he was pulled over for having tinted windows and ordered him to exit the vehicle. *Id.* Defendant initially refused. (1-ER-18). Officer Lannister greeted Defendant, “What’s up, Jon? How’s it going?” believing that his acquaintance with many of the Night’s Watch gang members could get Defendant to cooperate. (1-ER-162; 1-ER-222). After Officer Lannister told Defendant that they were allowed to do the investigation outside of the vehicle because of their safety concerns, Defendant agreed to step out of the vehicle. (1-ER-222). At no time throughout the interaction did the officers threaten or intimidate Defendant.

Just before Defendant exited the vehicle, Officer Lannister asked whether Defendant had “something in the car.” Defendant answered he did not. (1-ER-222). Officer Lannister asked,

“Do you have anything on you you’re not supposed to have?” *Id.* Defendant then responded that he had “dope” on him. *Id.* This exchange occurred “less than a minute-and-a-half” into the traffic stop. *Id.* Officer Lannister then asked whether there was a weapon inside the car, to which Defendant replied there was not. *Id.*

After Defendant stepped out of the vehicle, Officer Baratheon conducted an initial pat-down search, which took about 30 seconds. (1-ER-223; 1-ER-228). Officer Baratheon then ordered Defendant to place his hands on the hood of the car. Officer Baratheon reported that he felt a “grainy, crunchy substance” in Defendant’s right pants pocket that “[he] believed was methamphetamine based on [his] prior experience in recovering methamphetamine.” (1-ER-228). Officer Baratheon “later confirmed [it was] methamphetamine.” (1-ER-117).

Officer Baratheon then began searching Defendant’s vehicle. Officer Lannister believed that the vehicle contained additional evidence of a drug crime, given Defendant’s admission that he had illegal drugs and Officer Baratheon’s reporting that he felt dope in Defendant’s pocket. (1-ER-223). Officer Baratheon found a loaded Bersa S.A. Thunder .380 semiautomatic pistol behind the third-row seat of Defendant’s vehicle. *Id.*

While Officer Baratheon was searching Defendant’s vehicle, Officer Stark told Defendant to throw the dope on the hood of the police car. *Id.* Defendant removed four plastic baggies from his left shirt pocket and two plastic baggies from his right pants pocket. *Id.* Defendant confirmed that the baggies contained “crystal,” which the officers understood to refer to methamphetamine. (1-ER-224). The officers also noted that the quantity of methamphetamine was “well above [what] a person would possess for personal use.” (1-ER-252).

Officers Baratheon and Stark then handcuffed Defendant and placed him in the patrol car before transferring him to the WPD Men’s Jail where he was booked. (1-ER-224). Officer Stark

reports that “[a Miranda warning] happened while in booking prior to being questioned,” and no interrogation occurred before the Miranda waiver (1-ER-130). Defendant was charged in March of 2020 in a three-count indictment with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii), being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and possession of a firearm in relation to and in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). (1-ER-255–7).

B. The Motion to Suppress and the Suppression Hearing

On February 25, 2021, Defendant moved to suppress all evidence from the search and seizure, claiming that the officers’ stop did not have the requisite reasonable suspicion, that the officers prolonged the stop beyond the purpose of the traffic stop, and that the officers’ pat-down lacked reasonable suspicion to believe Defendant was armed and dangerous. (1-ER-238–41). Defendant also added that no consent was provided for the search of the vehicle. (1-ER-241).

The Government filed an opposition to Defendant’s motion to suppress. A suppression hearing followed on March 25, 2021. At the suppression hearing, the Government and Defendant direct and cross examined the three officers, as well as admitted into evidence the officers’ declarations, photographs of the vehicle, and photographs of the street where the traffic stop occurred. (1-ER-29). The officers were given an opportunity to expound on their declarations on direct-examination and Defendant cross-examined them on those facts. At the end of the suppression hearing, the court questioned each counsel on the issues they deemed probative before each side made their final remarks on their respective positions.

C. The Ruling on the Motion

The district court denied Defendant’s motion to suppress. The court found that the officers had reasonable suspicion sufficient to initiate the traffic stop, that their request for

Defendant to exit the vehicle was constitutional, that the officers did not unlawfully prolong the stop by “attend[ing] to related safety concerns,” that the pat-down of Defendant was justified by reasonable suspicion, and that the officers’ had probable cause for the pat-down and arrest. (1-ER-19–24). The court also found that the officers did not need Defendant’s consent to search the vehicle pursuant to *Arizona v. Gant*, 556 U.S. 332, 343 (2009). (1-ER-24).

The court began the order by asserting that *Maryland v. Wilson* permits officers to ask the driver to exit the vehicle during a traffic stop, due to the “inordinate risk confronting an officer as he approaches a person seated in an automobile.” 519 U.S. 408 (1997); (1-ER-20).

The court then addressed Defendant’s prolongation claim by citing *Rodriguez v. United States*: the Fourth Amendment tolerates certain unrelated investigations as long as they “do not measurably extend the duration of the stop,” and that “[t]raffic stops are ‘especially fraught with danger to police officers,’ so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely.” 575 U.S. 348 (2015); (1-ER-21). The court justified the officers’ questioning, noting that the “officers addressed safety concerns by asking [Defendant] whether he was in possession of anything ‘he was not supposed to have,’ including ‘a weapon.’” (1-ER-21). The court found that Defendant admitting to possessing “dope” allowed the officers to extend the stop to investigate new evidence of wrongdoing. (1-ER-21). Important in the court’s determination was that “only one minute passed from the time the officers reached Defendant’s car to the time Defendant admitted to possessing ‘dope,’” and any delay that lengthened the stop was caused by Defendant’s refusal to comply with the officers’ lawful requests to exit his vehicle. (1-ER-21). The court also noted an observation in *United States v. Gorman*, that “[t]he vast majority of roadside detentions last [] a few minutes.” 859 F.3d 706 (9th Cir. 2017); (1-ER-21).

The court disagreed with Defendant's argument that the pat-down violated the Fourth Amendment. The court based its conclusion on the officers having both knowledge that Defendant was a gang member previously arrested with a firearm and knowledge that Defendant possessed drugs, making the presence of a weapon more likely. (1-ER-23). The court went on to say that the officers had probable cause to arrest Defendant and "search his person incident to that arrest" because Defendant's admission to possessing dope furnished probable cause of a drug offense under California Health and Safety Code § 11350. (1-ER-23-4).

Finally, the court asserted that Defendant's consent was not needed to search the vehicle because *Arizona v. Gant* allows a vehicle search when "it [is] reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (1-ER-25). The court found that the Defendant's admitting possession and the baggies of methamphetamine "well above the amount for personal use" were sufficient to allow a vehicle search. (1-ER-25).

D. Conviction and Sentence

After the district court denied his motion to suppress, Defendant plead guilty pursuant to a conditional plea agreement in which he reserved his right to appeal the denial of the motion to suppress. (1-ER-12-3). Defendant admitted to possessing methamphetamine with intent to distribute, being a felon in possession of a firearm and ammunition, and carrying a firearm during and in relation to a drug trafficking crime. (1-ER-13). The district court imposed a term of 120-months' imprisonment followed by a supervised release term of four years. Both terms were based on Defendant's guilty plea to Counts 1, 2, and 3 of the Indictment. (1-ER-4-5).

SUMMARY OF ARGUMENT

The district court committed no error in denying Defendant's motion to suppress. For the reasons explained below, this Court should reject both of his claims.

First, Officer Lannister did not prolong the traffic stop by asking Defendant if he was in possession of anything “he was not supposed to have.” The district court correctly found that Officer Lannister asked this question to address safety concerns because he had previously arrested Defendant for concealing a gun while driving. Officer Lannister’s question also did not actually extend the stop and was supported by reasonable suspicion.

Second, the officers had probable cause to arrest Defendant and conduct searches of both his person and his car. Officer Baratheon had probable cause when he felt methamphetamine in the Defendant’s right front pants pocket. The district court correctly concluded that Defendant’s admission that he had “dope” provided sufficient basis to conduct a search incident to arrest of his person—which Defendant does not challenge. The district court also correctly concluded that this admission and the baggies of methamphetamine provided a sufficient basis to search his car.

Finally, this court is bound by the precedent set forth in *United States v. Butler* and *United States v. Smith* and is not authorized to overrule them absent an en banc hearing. Defendant acknowledges the precedential authority of both cases and concedes that the law was applied correctly. Accordingly, this Court should affirm.

ARGUMENT

A. District Court’s Factual Findings Were Not Clearly Erroneous

1. *Standard of review*

This court reviews “de novo the denial of a motion to suppress.” *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004) (en banc). This court also reviews for “clear error the factual findings underlying the denial of such a motion.” *United States v. Bynum*, 362 F.3d 574, 578 (9th Cir. 2004). A factual finding is clearly erroneous only if it is illogical, implausible,

or without support in inferences that may be drawn from the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

This court’s review of a district court’s reasonable suspicion determination is “a peculiar sort of *de novo* review, slightly more circumscribed than usual.” *United States v. Valdes-Vega*, 738 F.3d 1074, 1077 (9th Cir. 2013) (en banc) (quotation marks and citation omitted). This court applies clear error review to the district court’s factual findings and must then give “due weight to inferences drawn from those facts by resident judges and law enforcement officers.” *Id.* (quotation marks and citations omitted). In other words, this court “defer[s] to the inferences drawn by the district court and the officers on the scene, not just the district court’s factual findings.” *Id.* The court may affirm the denial of a motion to suppress on any ground fairly supported by the record. *United States v. Baron*, 860 F.2d 911, 917 (9th Cir. 1988).

2. *District court’s findings were logical and supported by the record*

In his opening brief, Defendant alleges that two of the district court’s factual findings were clearly erroneous. The two factual findings Defendant takes issue with are (1) that Officer Lannister’s questioning was covered by a public safety concern, and (2) that Officer Baratheon had probable cause when methamphetamine was found in Defendant’s right front pants pocket. For the first factual finding, the clear error that Defendant alleges is that the district court combined two of Officer Lannister’s questions, which they insist were separate inquiries. (AOB-23). For the second factual finding, the clear error that Defendant alleges is that the officers’ probable cause was flawed because “[t]he video does not show [Defendant] removing drugs from his right front pant pocket.” (AOB-26). Both clear error arguments are without merit.

a. District court did not clearly err in finding a safety concern

Defendant asserts that the district court's safety concern determination was clearly erroneous yet fails to furnish his claim with evidence that the factual finding is "illogical, implausible, or without support in inferences that may be drawn from the record." *Hinkson*, 585 F.3d at 1262. The Ninth Circuit has established that it "defer[s] to the inferences drawn by the district court and the officers on the scene, not just the district court's factual findings." *Valdes-Vega*, 738 F.3d at 1077. The inferences and factual findings of the district court are devoid of any clear error and directly compatible with the Supreme Court's holding in *Rodriguez v. United States*. 575 U.S. 348, 354 (2015).

Officer Lannister's inquiry with Defendant was not "intended to elicit an incriminating admission," as Defendant claims. (AOB-21). The question Defendant chose to single out was also not Officer Lannister's first question to Defendant. The record is clear that Officer Lannister first asked Defendant how he was doing before explaining clearly to him that they were going to carry out their investigation outside of the vehicle because of their safety concerns. (1-ER-222). The officers "spent about one minute addressing safety concerns" to Defendant. (1-ER-268). This explanation, which preceded the question that Defendant is disputing, was the beginning of the officers' safety concern line of inquiry.

The district court couched its holding in *Rodriguez*, a case that Defendant heavily relied on during the suppression hearing. The Supreme Court noted that "[t]raffic stops are 'especially fraught with danger to police officers,' so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely," even if that means officers engage in "certain unrelated investigations," as long as "[those investigations] do not measurably extend the duration of the stop." *Rodriguez*, 575 U.S. at 354.

Officer Lannister's questions fall squarely within the constitutionally permissible zone drawn by the Supreme Court in *Rodriguez*. The officers' traffic stop with Defendant was "fraught with danger" in a way even greater than what the Supreme Court generalized. *Id.* All three officers were aware of Defendant's affiliation with the Night's Watch gang, a group that is heavily involved with violent crime and drug trade. (1-ER-219). Officers Lannister and Baratheon also had personal experience with Defendant, having arrested him once in 2017 when Defendant unlawfully possessed and concealed a firearm in his waistband while driving and again in 2019 when Defendant was carrying methamphetamine. (1-ER-17). As the district court concluded in its order, the combination of Defendant's gang affiliation, Defendant's prior history of concealing firearms, and the high-crime area in which the traffic stop was taking place elevated the safety concern during the exchange between the officers and Defendant. (1-ER-21).

Officer Lannister's questions were also "negligibly burdensome precautions" as envisioned by the Supreme Court in *Rodriguez*. 575 U.S. at 354. The record is clear that the back-and-forth lasted "less than a minute-and-a-half into the traffic stop," so we can be confident that the questions were minimally invasive. (1-ER-222). The Ninth Circuit in *United States v. Gorman* also acknowledged that "[t]he vast majority of roadside detentions last [] a few minutes," placing Officer Lannister's interaction with Defendant comfortably within the bounds of a lawful stop. 859 F.3d 706, 714 (9th Cir. 2017).

b. Officers' probable cause was not based upon clearly erroneous facts

Defendant also alleges that the officers' probable cause was clearly erroneous because "[t]he video does not show [Defendant] removing drugs from his right front pant pocket." Defendant goes as far to say that "Baratheon was wrong when he believed he felt drugs in [Defendant's] right front pant pocket." (AOB-25–6). This rendition of the facts is incomplete.

Prior to the pat-down, Defendant admitted to possessing “dope” on him, which the officers understood from their training and experience to refer to methamphetamine. (1-ER-228). The officers had previously found methamphetamine in Defendant’s possession and knew that the Night’s Watch gang “controls most of the [methamphetamine] trade in Westeros.” (1-ER-24). During this pat-down, Officer Baratheon reported that “[he] felt a grainy, crunchy substance in [Defendant’s] right pants pocket that [he] believed was methamphetamine based on [his] prior experience.” (1-ER-228). The record is clear that Defendant was then ordered to remove the drugs from his person—he removed four plastic baggies of methamphetamine from his left shirt pocket and two plastic baggies of methamphetamine from his right front pants pocket. (1-ER-223; 1-ER-251). Immediately after removing the six baggies from his person, Defendant confirmed that the baggies contained “crystal,” a clear reference to methamphetamine. (1-ER-224). The officers’ sworn declarations furnish the factual findings necessary for probable cause, and the discrepancy Defendant alleges is insufficient to amount to clear error. *See Hinkson*, 585 F.3d at 1262.

Assuming *arguendo* that Defendant did not have two baggies of methamphetamine in his right front pants pocket, which we can be sure he did based on the officers’ sworn declarations and evidence, it still would not be dispositive. “Probable cause to arrest exists when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed...” *Garcia v. Cnty. Of Merced*, 639 F.3d 1206, 1209 (9th Cir. 2011) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). And in coming to this probable cause determination, officers “may draw on their experience and specialized training to make inferences.” *Hart v. Parks*, 450 F.3d 1059, 1067 (9th Cir. 2006). Inferences that the Ninth Circuit has established are given “deference” on clear error review.

Valdes-Vega, 738 F.3d at 1077. When he felt the crunchy substance in Defendant’s pocket, Officer Baratheon relied on his “experience and specialized training” to come to the determination that he was feeling methamphetamine, which he later confirmed. *Hart*, 450 F.3d at 1067. This inference came after Defendant had already admitted to possessing “dope,” an admission which the Supreme Court has recognized as “carry[ing] [its] own indicia of credibility...sufficient at least to support a finding of probable cause to search.” *United States v. Harris*, 403 U.S. 573, 583 (1971).

Given the evidence of possession and Defendant’s two admissions to possessing methamphetamine, the officers had knowledge sufficient that Defendant was in violation of California Health and Safety Code § 11350. The officers had probable cause of this violation even before Officer Baratheon’s pat-down based on Defendant’s admission. *Id.* When Officer Baratheon felt the methamphetamine during his pat-down, that specialized inference only further substantiated his probable cause.

B. This Court is Bound by Circuit Precedent and En Banc Reconsideration of those Precedents is Unjustified

Defendant acknowledges the precedential authority of *United States v. Butler* and concedes that the district court correctly applied *Butler* to the facts of the case. 249 F.3d 1094, 1098 (9th Cir. 2001). (AOB-22). Defendant also concedes that *United States v. Smith* is similarly binding and was correctly applied to the facts of the case. 389 F.3d 944, 951 (9th Cir. 2004). (AOB-26). In contesting the district court’s determinations rooted in *Butler* and *Smith*, Defendant is asking this court to do something it is not authorized to do. This court is bound by those precedents and cannot overrule them. *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (A circuit panel may disregard circuit precedent only when “the reasoning or theory of [the] prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher

authority.”). Defendant does not cite any “intervening higher authority” to compel this circuit panel to disregard either case’s precedential authority.

1. *Butler should not be reconsidered en banc*

Defendant argues that *Butler*, which was reasoned on *Berkemer v. McCarty*, should be reconsidered because it is normatively incorrect and that applying *Butler* to the facts of this case demonstrates that. 468 U.S. 420, 439 (1984). More specifically, Defendant argues that officers should be constitutionally required to issue Miranda warnings during traffic stops. *Miranda v. Arizona*, 384 U.S. 436 (1966). In support of this, Defendant argues that the two features of traffic stops that the *Berkemer* Court found to mitigate potential police coercion do not apply to the case at bar. Those two factors are: (1) detention during a traffic stop being presumptively temporary and brief, and (2) the circumstances during a traffic stop being such that the motorist does not feel completely at the mercy of the police. (AOB-24). Defendant argues that those two factors as applied lead to the conclusion that the traffic stop was coercive and that Miranda warnings were needed. However, the facts of the case clearly establish the opposite conclusion.

Contrary to Defendant’s argument, the *Berkemer* Court’s two factors cut in favor of the officers. The first *Berkemer* factor is that traffic stops are presumptively temporary and brief. Defendant’s initial traffic stop before suspicion increased after his admission only lasted “less than a minute-and-a-half.” (1-ER-222). The *Berkemer* Court notes that “[t]he vast majority of roadside detentions last [] a few minutes.” *Berkemer*, 468 U.S. at 437. The duration of the officers’ interaction with Defendant is comfortably within the limits the *Berkemer* Court envisioned when creating the first factor. The second *Berkemer* factor is that circumstances during a traffic stop are such that the motorist does not feel completely at the mercy of the police. In support of this, the *Berkemer* Court noted the public view of the stop. During

Defendant's cross-examination of Officer Lannister, Defendant asserted that "this part of Westeros...[is] a major thoroughfare of Westeros." (1-ER-38). Defendant further asserted that the street where the traffic stop occurred is "one of the main arteries in Westeros," is "a very busy street," and "isn't some remote part of town." (1-ER-38). All of this seems to suggest that the street where the traffic spot occurred is exactly the sort of "public view" envisioned by the *Berkemer* Court in creating the second factor.

Defendant applies the *Berkemer* factors in support of why *Miranda* should not apply to traffic stops. But applying the *Berkemer* factors here only demonstrates their rigor and accuracy. This, combined with the normatively desirable public policy justifications for not extending *Miranda* warnings to traffic stops, demonstrates why *Butler* was correct and should not be reconsidered en banc. *Miranda*, 384 U.S. at 486 ("Our decision is not intended to hamper the traditional function of police officers in investigating crime...").

2. *Smith should not be reconsidered en banc*

Defendant argues that *Smith* should be reconsidered because it is normatively incorrect, particularly that the doctrinal underpinnings of searches incident to arrest do not arise until the arrest is actually made. The two doctrinal underpinnings cited by Defendant are officer safety and the prevention of destruction or concealment of evidence. The case at bar demonstrates that this assertion is not categorically true, particularly in the case of the first doctrinal underpinning of officer safety.

As previously discussed, Defendant has a background in violence and drug trafficking. (1-ER-219). Defendant is affiliated with a dangerous gang, the traffic stop is occurring in that gang's area of operation, and Defendant has previously been arrested for unlawfully possessing a firearm that he had hidden in his waistband while driving. (1-ER-17). Furthermore, the officers

and Defendant have a track record of arrests, which Defendant is undoubtedly aware of. (1-ER-17). Given Defendant's background, the officers needed to ensure that he did not have access to a firearm or weapon during their encounter. In other words, their justification of officer safety was present prior to the arrest, because their encounter was with a repeat player with a known criminal background. The search incident to arrest justification of officer safety is grounded in the idea that arrestees may become more aggressive after being detained. *United States v. Johnson*, 913 F.3d 793, 804 (9th Cir. 2019), vacated, *Johnson v. United States*, 140 S.Ct. 440 (2019). The situation at bar disproves Defendant's argument against *Smith*. Encounters with repeat players who have been arrested in the past for concealing weapons, and thus may harbor preexisting aggression, may prompt search incident to arrest justifications before a specific arrest is effected.

Defendant cites Judge Watford's argument that *Smith* is unsound because it makes the legality of the search dependent upon events that occur after the search. (AOB-28). Judge Watford argues that incentivizing arrests to justify previous searches is a moral hazard. The case at hand again demonstrates that that assertion is not categorically true. The situation between Defendant and the officers had no risk of moral hazard because by the time the search was effected, the officers had sufficient probable cause to conduct a search, given Defendant's background and Defendant's admission to possessing "dope." (1-ER-24). There was no need to effect a later arrest to justify an earlier search as the justification existed prior to the search. The case at bar harbors none of the criticisms of *Smith*, as officer safety was at risk and moral hazard was nonexistent, and is thus unsuitable as a vehicle for reconsideration of the issues en banc.

Applicant Details

First Name	Chantel
Middle Initial	A
Last Name	Johnson
Citizenship Status	U. S. Citizen
Email Address	chanteljohnson@berkeley.edu
Address	<div> Address Street 2430 Dwight Way, Apt 306 City Berkeley State/Territory California Zip 94704 </div>
Contact Phone Number	704-298-2818

Applicant Education

BA/BS From	University of North Carolina-Chapel Hill
Date of BA/BS	May 2018
JD/LLB From	University of California, Berkeley School of Law https://www.law.berkeley.edu/careers/
Date of JD/LLB	May 12, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	California Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	-----------

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Packel, Robin
robin_packel@fd.org
Kumabe, Kerry
kkumabe@law.berkeley.edu
Kildee, Maureen
mkildee@ebclc.org
5102696628

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Chantel A. Johnson

2430 Dwight Way, Apt. 306, Berkeley, CA, 94704 • chanteljohnson@berkeley.edu • 704.298.2818

March 23, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Jamar K. Walker:

I am a third-year law student at the University of California, Berkeley, School of Law, and the Senior Development Editor of the *California Law Review*. I plan to begin my career as a litigation associate at Cooley LLP in San Francisco following graduation. I am writing to apply for a 2024-2025 term clerkship in your chambers or any subsequent term.

My experiences throughout law school reflect a desire and commitment to bettering myself—as a legal researcher, writer, teammate, and advocate. During law school, I have represented numerous clients and argued cases before judges and administrative boards in California as a court certified law student. In fact, I represented a client during the first semester of my 1L year. There, I was nervous but also excited and spent hours interviewing the client and preparing for oral argument. But perhaps nothing shows more growth than my most recent court appearance. I still spent hours preparing the case, but I knew all the contours of the opposing party's argument. I even successfully made court objections. I believe these experiences have prepared me to contribute meaningfully to your chambers as a judicial clerk.

Enclosed please find my resume, law school transcript, and writing sample. The writing sample is a brief from an advanced legal research and writing course that examines Title VII of the Civil Rights Act of 1964. Also enclosed are letters of recommendation from my Legal Research and Writing Professor Kerry Kumabe (kkumabe@law.berkeley.edu) and my clinic/externship supervisors Robin Packel (robin_packel@fd.org) and Maureen Kildee (mkildee@ebclc.org).

If there is any other information that may be helpful to you, please let me know. I can be reached by phone at 704.298.2818, or by email at chanteljohnson@berkeley.edu. Thank you very much for considering my application.

Respectfully,



Chantel A. Johnson

Chantel A. Johnson

2430 Dwight Way Apt 306, Berkeley, CA, 94704 • chanteljohnson@berkeley.edu • 704.298.2818

EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA

J.D. Candidate, May 2023

Honors: Prosser Prize in Social Justice Issues in Entertainment & Media Law (second in class), Prosser Prize in Negotiations, California ChangeLawyers 1L Scholarship recipient, PracticePro Diversity Scholar
Activities: Police Review Project (Co-Leader), Admissions Ambassador, Law Students of African Descent (Membership Chair), First Generation Professionals, Womxn of Color Collective
Journals: *California Law Review*

University of North Carolina at Chapel Hill (UNC), Chapel Hill, NC

B.A. in Political Science, Minor in Philosophy, May 2018

Honors: Dean's List, Hayden B. Renwick Academic Achievement Award, Pi Sigma Alpha
Activities: NAACP, UNC Office for Diversity and Inclusion, Community Government

EXPERIENCE

City of Berkeley, Berkeley, CA

February 2023—Present

Councilmember/Commissioner

Incoming commissioner for the city of Berkeley's Police Accountability Board; currently waiting to be officially appointed.

Berkeley Law Death Penalty Clinic, Berkeley, CA

August 2022 – Present

Clinical Student

Conducts research regarding death qualification and juror biases on behalf of client on death row in Missouri.

Center on Race, Sexuality & Culture

August 2022 – Present

Research Assistant for Professor Russell Robinson

Collects data regarding the intersection of race, technology, and dating apps via client interviews and statistical research.

Cooley LLP, San Francisco, CA

May 2022 – July 2022

Summer Associate (Litigation Associate Offer Extended)

Analyzed caselaw and drafted memos concerning contractual disputes to assist attorneys in discovery, arbitrations, and upcoming depositions. Presented research findings to case team regarding ineffective counsel claims for habeas corpus petition. Researched and analyzed California Invasion of Privacy Act (CIPA) for class action and jurisdiction purposes.

Office of the Federal Public Defender – Northern District of California, Oakland, CA

January 2022 – April 2022

Law Clerk

Participated in weekly strategy calls for appellate litigation. Reviewed and analyzed discovery documents, photos, and jail interviews to make recommendations based on findings. Collected data on sex crimes by district to assess global correlation between client/victim profiles, sexual deviances, and subsequent arrests. Drafted initial motions of suppress to government. Drafted reply brief to government surrounding Miranda rights and privacy violations.

East Bay Community Law Center, Berkeley, CA

August 2021 – May 2022

Clinical Student, Clean Slate Clinic

Successfully litigated a §1203.3, two §1203.4s, and a §17(b) felony reduction in court as a certified law student. Analyzed client records and rap sheets to determine best penal code remedy. Interviewed and drafted documents for DSS clients to secure job approval. Communicated with clients weekly regarding case development.

Cooley LLP / Turo, San Francisco, CA

May 2021 – August 2021

Law in Technology Diversity Fellow/Summer Associate

Prepared case summaries and memoranda for business litigation and regulatory matters. Participated in weekly strategy calls for Turo litigation. Researched and drafted memos to analyze viability of ACLU's fourth amendment claims against Louisiana police.

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Berkeley Law

University of California

Office of the Registrar

Chantel A Johnson
Student ID: 3035970014
Admit Term: 2020 Fall

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Page 1 of 2

Academic Program History
Major: Law (JD)

Cumulative Totals 30.0 30.0

Awards

Prosser Prize 2021 Spr: Negotiations
Prosser Prize 2021 Fall: Soc Just Issues Ent&Media Law

2020 Fall					
Course	Description	Units	Law Units	Grade	
LAW 200F	Civil Procedure	5.0	5.0	P	
LAW 201	Amanda Tyler Torts	4.0	4.0	P	
LAW 202.1A	Talha Syed Legal Research and Writing	3.0	3.0	CR	
LAW 230	Kerry Kumabe Criminal Law	4.0	4.0	P	
	Khiara Bridges				
		<u>Units</u>	<u>Law Units</u>		
Term Totals		16.0	16.0		
Cumulative Totals		16.0	16.0		

2021 Fall					
Course	Description	Units	Law Units	Grade	
LAW 224.3	Soc Just Issues Ent&Media Law	3.0	3.0	HH	
Fulfills 1 of 2 Writing Requirements					
LAW 241	Russell Robinson Evidence	4.0	4.0	P	
LAW 289	Rebecca Wexler EBCLC Seminar	2.0	2.0	CR	
LAW 295.1G	Seema Patel Calif Law Review	1.0	1.0	CR	
LAW 295.5Z	Saira Mohamed EBCLC Clinic	5.0	5.0	CR	
Units Count Toward Experiential Requirement					
	Seema Patel				
		<u>Units</u>	<u>Law Units</u>		
Term Totals		15.0	15.0		
Cumulative Totals		45.0	45.0		

2021 Spring					
Course	Description	Units	Law Units	Grade	
LAW 202.1B	Written and Oral Advocacy	2.0	2.0	P	
Units Count Toward Experiential Requirement					
LAW 202F	Kerry Kumabe Contracts	4.0	4.0	P	
LAW 220.6	Prasad Krishnamurthy Constitutional Law	4.0	4.0	P	
Fulfills Constitutional Law Requirement					
LAW 231.5	Kristen Holmquist CA Prisons & Discret. Parole	1.0	1.0	CR	
Units Count Toward Experiential Requirement					
LAW 245	Keith Wattley Negotiations	3.0	3.0	HH	
Units Count Toward Experiential Requirement					
	Jessica Notini				
		<u>Units</u>	<u>Law Units</u>		
Term Totals		14.0	14.0		

2022 Spring					
Course	Description	Units	Law Units	Grade	
LAW 231	Crim Procedure- Investigations	4.0	4.0	P	
LAW 295.5Y	Orin Kerr Advanced EBCLC Clinic	2.0	2.0	CR	
Units Count Toward Experiential Requirement					
LAW 295.6B	Seema Patel Criminal Field Placement	5.0	5.0	CR	
Units Count Toward Experiential Requirement					
LAW 295C	Susan Schechter Criminal Law Ethics Seminar	2.0	2.0	P	
Fulfills Either Prof. Resp. or Experiential					
	Nisha Shah Joseph Breyer Susan Schechter				
		<u>Units</u>	<u>Law Units</u>		
Term Totals		13.0	13.0		

 Carol Rachwald, Registrar

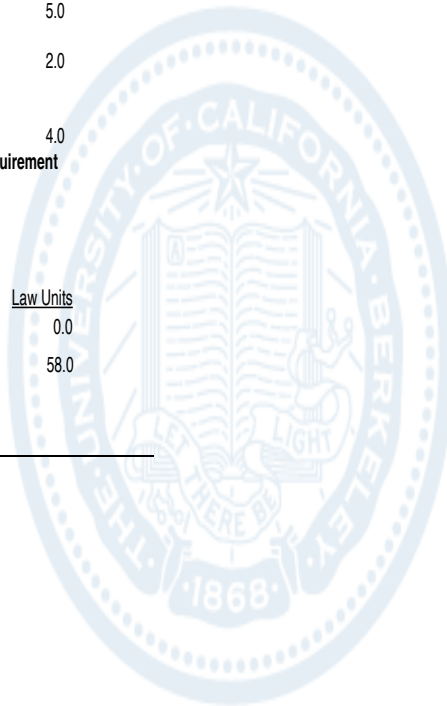
Chantel A Johnson
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Admit Term: 2020 Fall

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Page 2 of 2

Cumulative Totals 58.0 58.0

2022 Fall				
Course	Description	Units	Law Units	Grade
LAW 207.5	Advanced Legal Writing	3.0	3.0	
	Fulfills 1 of 2 Writing Requirements			
LAW 222	Lindsay Saffouri Federal Courts	5.0	5.0	
LAW 285.2D	Amanda Tyler Death Penit Cl Sem I	2.0	2.0	
LAW 295.5D	Ty Alper Elisabeth Semel Death Penalty Clinic	4.0	4.0	
	Units Count Toward Experiential Requirement			
	Ty Alper Elisabeth Semel Mridula Raman			
		<u>Units</u>	<u>Law Units</u>	
	Term Totals	0.0	0.0	
	Cumulative Totals	58.0	58.0	



 Carol Rachwald, Registrar

University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	-	High Honors	CR	-	Credit
H	-	Honors	NP	-	Not Pass
P	-	Pass	I	-	Incomplete
PC	-	Pass Conditional or Substandard Pass (1997-98 to present)	IP	-	In Progress
NC	-	No Credit	NR	-	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: <https://www.law.berkeley.edu/careers/for-employers/grading-policy/>

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FEDERAL PUBLIC DEFENDER
NORTHERN DISTRICT OF CALIFORNIA
13TH FLOOR FEDERAL BUILDING - SUITE 1350N
1301 CLAY STREET
OAKLAND, CA 94612

JODI LINKER
Federal Public Defender
ROBIN PACKEL
Assistant Federal Public Defender

Telephone: (510) 637-3500
Fax: (510) 637-3507

August 19, 2022

Your Honor:

I am happy to recommend Chantel Johnson for a position as your law clerk.

From the start, Chantel demonstrated her ability to get to the heart of new-to-her legal issues by quickly researching and drafting a memo about how other circuits apply the attenuation exception to the exclusionary rule. Chantel was taking Criminal Procedure as she was working with us, on mostly Fourth Amendment issues, but she put in the work so that a lack of prior knowledge was never an issue. She progressed from drafting this research memo on a narrow, well-defined Fourth Amendment question to taking the lead on a motion to suppress that raised multiple Fourth and Fifth amendment issues. She assessed the challenges and strengths of the various legal arguments and drafted the motion accordingly. Her analysis was clear and thoughtful.

In a motion for early termination of supervision, Chantel demonstrated her skills in connecting with a client and turning the facts she elicited into a compelling story of rehabilitation. Moreover, when she learned that our office did not have guidelines for people writing letters of support on behalf of our clients, she took the initiative to draft some. Our office adopted Chantel's guidelines for use in other cases.

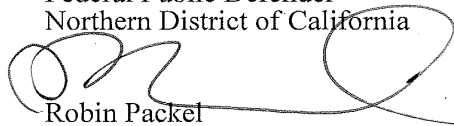
Chantel is a careful yet efficient researcher, and a concise writer who appreciated and incorporated feedback. She also is delightful to work with. She took an interest in all aspects of the office's work, came to our meetings well-prepared, never hesitated to ask when she had questions, and was very respectful of other people's time. Effective communication is one of Chantel's many strengths.

Chantel's diligence and her top-notch research and writing would serve your chambers well. I recommend her highly for a position as your law clerk.

Please feel free to contact me if I can provide any further information. Email is the best way to reach me: robin_packel@fd.org.

Sincerely,

Jodi Linker
Federal Public Defender
Northern District of California



Robin Packel
Assistant Federal Public Defender

December 13, 2022

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Chantel Johnson

Dear Judge Walker:

I write in enthusiastic support of Chantel Johnson's application to clerk in your chambers. I had the pleasure of teaching Chantel throughout her first year at Berkeley Law, initially in Legal Research and Writing (fall semester) and then in Written and Oral Advocacy (spring semester). In both classes Chantel demonstrated a powerful commitment to learning and produced thoughtful and professional work. I am confident that Chantel will excel as a law clerk and an attorney.

Chantel displayed a tremendous drive to learn. Although Chantel's entire first-year experience was remote due to the pandemic, she arrived at law school enthusiastic to acquire skill in legal analysis and writing. In the fall semester, when we focused on objective writing, Chantel took every opportunity to improve. The class was ungraded, but Chantel deeply engaged with each assignment and proactively sought feedback. Her final memo, which analyzed a discrimination claim under the Americans with Disabilities Act, was very strong. In my end-of-semester feedback, I commented that her analysis was "sophisticated and concrete." Overall, I was very impressed with her growth over the course of the semester.

In the spring, when we transitioned to the graded advocacy portion of the course, Chantel's final brief based on the Copyright Act was very persuasive. I assigned the students in Chantel's class to represent the fictional defendant, an artist who created large-scale geometric paintings shown at an art gallery in New York. Her opponent represented the plaintiff, an origami artist who claimed that the defendant unlawfully copied the lines of his origami crease patterns in her paintings. Chantel acknowledged that her client used the plaintiff's work as inspiration but argued that the fair use defense applied. I found her argument compelling. She showed great attention to the factual Record and a knack for persuasive yet pithy phrasing.

In oral argument, Chantel also displayed skill. She had the presence of mind, when questioned, to return to her central organizing theme throughout. This made her argument powerful and easy to understand. She also maintained her composure when asked tough questions. Although Chantel had to participate in oral argument over Zoom due to the pandemic, she was undaunted and able to rise to the occasion.

Chantel has told me that she loves legal research and writing, and it shows. For example, as the Senior Development Editor on the California Law Review, Chantel took on the monumental task of designing the legal writing problem used as part of the application process. Further, she continually seeks out opportunities to learn. Chantel received a passing grade in my course—the curve was unusually competitive that year and details such as Bluebooking ended up affecting her grade. Since then, she has been dedicated to refining her skills. She sought practical experience as a law clerk at the Federal Public Defender and at the East Bay Community Law Center. She also earned high honors and academic prizes in two other courses that required excellence in writing or oral communication.

Beyond the classroom, Chantel is an absolutely delightful person. Witty, warm, funny, thoughtful, generous, and kind, she is just a joy. In the five years that I have been on the Berkeley Law faculty, I count her as one of my favorite law students. Chantel is the first person in her family to graduate from both high school and college, and she has spoken to me about how the environment of a law school or a law firm initially felt disconcerting to her. Despite this, Chantel quickly learned to navigate these high-pressure environments with grace, while somehow finding the time to help others. When she worked as a summer associate at Cooley LLP, she went out of her way to assist her peers, even volunteering to take on the assignments of another summer associate who felt overwhelmed by the workload. Identifying her as a community leader, the Berkeley Law admissions committee asked her to become an ambassador. Chantel speaks to prospective first-generation professional law students about her experience. In doing so, she's become an inspiration for incoming and first-year law students.

I am confident that Chantel would be a wonderful addition to your chambers. She communicates clearly in writing and in person, and she's a joy to be around. I therefore recommend Chantel for a clerkship. Please do not hesitate to contact me at (510) 643-2739 or email me at kkumabe@law.berkeley.edu if I can provide any further information.

Sincerely,

Kerry S. Kumabe
Professor of Legal Writing
Legal Research, Analysis, and Writing Program
University of California, Berkeley School of Law

Kerry Kumabe - kkumabe@law.berkeley.edu



September 1, 2022

To Whom It May Concern

Chantel is passionate and professional in the work she does, going the extra mile to connect with a client or finish a project. She was able to successfully engage a client with our services after we had tried and failed for more than two years. The client was mentally ill and repeatedly stopped communications when he became frustrated or confused. Chantel's gentle persistence and understanding accomplished what I could not - he agreed to have us represent him, and trusted Chantel so much that he allowed her to work with him on his letter to the judge.

Chantel represented another client in court. Again, her ability to connect with the client to draw out her story enabled Chantel to successfully argue to the judge why the client's circumstances and history merited granted her petition in the interest of justice. Her in-depth knowledge of the client's goals and needs enabled her to advocate strongly on the client's behalf.

In another case, Chantel performed a complicated review of a state licensing issue that involved both interpreting the relevant statutes and analyzing conflicting records from multiple government agencies. Chantel then assisted the client in writing her personal statement that was submitted to the state agency in support of her criminal record exemption request, assisted the client in gathering supplemental documentation in support of that request, and submitted the exemption request to the agency.

In addition to her client communications, legal analytical skills and courtroom advocacy, Chantel also worked tirelessly on our backlog of legal correspondence, and did hours of research that enabled us to update our website with accurate referrals for Clean Slate services throughout the state of California.

I give my full recommendation to Chantel, as I believe in her ability to be a great contributor to the role of a judicial clerk.

Best,

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